TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1901~~ 1902.

No. ~~125~~ 126.

FRANCIS WINSLOW, AUGUSTUS JAY, AND THE AMERICAN SECURITY AND TRUST COMPANY, SUBSTITUTED TRUSTEES UNDER THE WILL OF CATHERINE PEARSON, DECEASED, APPELLANTS,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED JUNE 30, 1902.

(18,212)

(18,212.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 359.

FRANCIS WINSLOW, AUGUSTUS JAY, AND THE AMERICAN SECURITY AND TRUST COMPANY, SUBSTITUTED TRUSTEES UNDER THE WILL OF CATHERINE PEARSON, DECEASED, APPELLANTS,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print
Caption	1	1
Transcript from the supreme court of the District of Columbia	1	1
Caption	1	1
Bill of complaint	1	1
Exhibit No. 1—Agreement of trustees with B. & O. R. R. Co., August 1, 1872	7	7
No. 2—Agreement of trustees with B. & O. R. R. Co., February 1, 1883	8	8
No. 3—Agreement of trustees with B. & O. R. R. Co., October 17, 1892	10	9
No. 4—Letter, J. D. McCubbin, Jr., agent, to Walter S. Cox *et al.*, trustees, August 4, 1897	11	10
No. 5—Letter, Francis Winslow to M. J. Colbert, September 27, 1897	11	11
No. 6—Letter, Eliza W. Patterson to Mr. Ijams, January 31, 1898	11	11

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 21, 1901.

	Original.	Print
Exhibit No. 7—Receipt of Carlisle & Johnson to B. & O. R. R. Co., January 5, 1900	12	11
No. 8—Letter, J. D. McCubbin, Jr., to Francis Winslow, February 18, 1899	12	12
No. 9—Letter, J. D. McCubbin, Jr., to trustees, January 23, 1900	13	13
Restraining order	14	13
Answer	14	14
Affidavit of Francis Winslow	23	23
Defendants' Exhibit No. 1—Agreement of trustees with B. & O. R. R. Co., January 30, 1888.	25	24
No. 2—Last will and testament of Catherine Pearson.	26	26
No. 3—Decree in case of Cox, trustee, *vs.* Patterson *et al.*, 13707, equity	31	30
No. 4—Agreement between trustees and B. & O. R. R. Co., August, 1897.	31	31
Order containing restraining order	33	32
Depositions on behalf of complainant	33	33
Testimony of John D. McCubbin, Jr.	34	34
Edward J. Stellwagen	43	42
George E. Hamilton	46	45
John D. McCubbin, Jr. (recalled)	47	46
Wm. B. Turpin	48	47
Stipulations as to facts, &c.	50	49
Exhibit A. H. No. 1—Letter, Walter S. Cox to J. D. McCubbin, August 8, 1897	50	49
No. 2—Letter, J. D. McCubbin, Jr., to Cox *et al.*, trustees, August 10, 1897	51	50
No. 3—Letter, Winslow, trustee, to B. & O. R. R. Co., September 27, 1897	51	50
No. 4—Letter, J. D. McCubbin, Jr., to Hamilton & Colbert, July 31, 1897	51	51
No. 5—Letter, J. D. McCubbin, Jr., to Hamilton & Colbert, August 4, 1897	52	51
No. 6—Agreement between Cox *et al.*, trustees, and B. & O. R. R. Co., October 17, 1892	52	51
No. 7—Voucher of January 29, 1898	54	53
No. 8—Letter, Eliza W. Patterson to Mr. Ijams, January 12, 1898	55	54
No. 9—Letter, Eliza W. Patterson to Mr. Ijams, January 27	55	54
No. 10—Letter, Eliza W. Patterson to Mr. Ijams, February 3, 1898	55	55
No. 11—Letter, Eliza W. Patterson to Mr. Ijams, February 5, 1898	56	55
No. 12—Letter, W. H. Ijams to Winslow, trustee, January 20, 1899	56	55
No. 13—Letter, Francis Winslow to J. D. McCubbin, Jr., January 25, 1899	57	56
No. 14—Letter, J. D. McCubbin, Jr., to Francis Winslow, February 28, 1899 (?)	57	56

	Original.	Print
Exhibit A.H. No. 15—Letter, Winslow, trustee, to W. H. Ijams, January 31, 1899	57	57
No. 16—Letter, Francis Winslow to J. D. McCubbin, February 15, 1899	58	57
No. 17—Letter, C. H. Moran to Francis Winslow, April 18, 1899	58	57
No. 18—Letter, J. D. McCubbin, Jr., to Winslow, trustee, April 21, 1899	59	58
No. 19—Letter, Francis Winslow to J. D. McCubbin, Jr., April 27, 1899	59	58
No. 20—Letter, Eliza W. Patterson to treasurer B. & O. R. R. Co., August 4, 1884	59	58
No. 21—Letter, Eliza W. Patterson to Mr. Ijams, February 17, 1886	60	59
No. 22—Letter, Eliza W. Patterson to treasurer B. & O. R. R. Co., July 5, 1886	60	59
No. 23—Letter, Eliza W. Patterson to Mr. Ijams, July 21, 1886	60	59
No. 24—Letter, Mrs. Carlisle P. Patterson to treasurer B. & O. R. R. Co., February 1, 1887	61	60
No. 25—Letter, Eliza W. Patterson to Mr. Ijams, January 26, 1888	61	60
No. 26—Letter, Eliza W. Patterson to Mr. Ijams, August 1, 1888	61	60
No. 27—Letter, Eliza W. Patterson to Mr. Ijams, July 15, 1889	62	61
No. 28—Letter, Eliza W. Patterson to Mr. Ijams, January 11, 1890	62	61
No. 29—Letter, Eliza W. Patterson to Mr. Ijams, July 1, 1890	62	61
No. 30—Letter, Eliza W. Patterson to Mr. Ijams, July 14, 1891	63	62
No. 31—Letter, Eliza W. Patterson to Mr. Ijams, July 13, 1892	63	62
No. 32—Letter, Eliza W. Patterson to Mr. Ijams.	63	62
No. 33—Letter, Francis Winslow to W. N. Bolling, August 21, 1893	64	63
No. 34—Letter, Eliza W. Patterson to Mr. Ijams, July 11, 1895	64	63
No. 35—Letter, Eliza W. Patterson to treasurer B. & O. R. R. Co., January 7, 1896	64	63
No. 36—Letter, Eliza W. Patterson to Mr. Ijams, July 15, 1896	64	63
No. 37—Letter, Eliza W. Patterson to Mr. Ijams, January 9, 1897	65	64
No. 38—Letter, Eliza W. Patterson to Mr. Ijams, July 23, 1897	65	64
No. 39—Letter, F. Winslow to "Dear Fisher," November 18, 1887	65	64
No. 40—Letter, Thos. J. Fisher to Lieut. Francis Winslow, November 23, 1887	66	65

1 In the Court of Appeals of the District of Columbia.

THE BALTIMORE AND OHIO RAILROAD CO., Appellant,
vs.
FRANCIS WINSLOW ET AL. } No. 1087.

Supreme Court of the District of Columbia.

THE BALTIMORE AND OHIO RAILROAD Company
vs.
FRANCIS WINSLOW, AUGUSTUS JAY, and The American Security and Trust Company, Substituted Trustees under the Will of Catharine Pearson, Deceased. } No. 21764. In Equity.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Bill of Complaint.

Filed October 4, 1900. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

THE BALTIMOEE AND OHIO RAILROAD Company
vs.
FRANCIS WINSLOW, AUGUSTUS JAY, and THE American Security and Trust Company, Substituted Trustees under the Will of Catherine Pearson, Deceased. } Equity. No. 21764, Dock. 49.

To the honorable the supreme court of the District of Columbia, sitting as a court of equity:

Your complainant states as follows:

First. That it is a body corporate, having an office and doing business in the District of Columbia.

Second. That the defendants Francis Winslow and Augustus Jay, are citizens of the United States, the former being a sometime
2 resident of the District of Columbia and the latter a citizen and resident of the State of New York, and the defendant The American Security and Trust Company is a corporation duly incorporated in and for the District of Columbia, authorized by its charter to act as trustee, and has its office and is doing business in the District of Columbia, and all of said defendants are sued as substituted trustees under the last will of Catherine Pearson, deceased.

Third. That in 1871 and 1872, when its Metropolitan branch was being constructed within the District of Columbia by The Baltimore and Ohio Railroad Company, this complainant, negotiations were entered upon by and between said company and Carlisle P. Patterson, William H. Philip, and Walter S. Cox, the original trustees under the will of Catherine Pearson, deceased, for the purchase of lots numbered nine (9), ten (10), eleven (11), and twelve (12), in square numbered seven hundred and ten (710), the said described lots belonging to the estate of said Catherine Pearson, and their possession being useful to said company in the construction of the said Metropolitan branch. The terms of purchase had been agreed upon when it was discovered that by reason of some defect in title or want of power in the trustees the said trustees were unable to make a valid conveyance and transfer of said property, and thereupon it was agreed that the said trustees should lease to said company the said lots for the term of five years, and should pay therefor the sum of $755.00 *per* annum, and that at any time during the term aforesaid, on payment to the trustees by said complainant of the sum of $12,592.00, which was the price agreed upon when the sale of said lots was contemplated, the trustees would convey the premises aforesaid to this complainant, its successors and assigns, by a good and sufficient deed in fee-simple, with all the title and estate therein of the said parties of the first part; and, further, that at or before the expiration of the term aforesaid, on the request of this complainant, its successors and assigns, the trustees would renew said lease with the same agreements and privileges as therein contained for another term of five years, or until such time as said trustees should be prepared to convey the said premises as agreed upon, with a perfect title in fee-simple thereto, and in case this complainant should omit to make said request at or before the expiration of said term the said trustees were required to notify said complainant of the expiration of said term; and to require it to exercise its election to renew said lease, and the privilege to renew, as aforesaid, should continue for three months after such notice, all of which is fully contained and set forth in the lease entered into and executed by said trustees and this complainant on the first day of August, 1872, a copy of which is filed herewith, marked "Complainant's Exhibit No. 1," and is prayed to be read and considered as a part of this bill.

Fourth. That while at the expiration of the lease referred to no formal renewal was made, yet the said lease was in fact renewed by the understanding and consent of the parties and by the acceptance on the part of the trustees of the rent according to the condi-
3 tions of said lease, and this arrangement and understanding was continued until the first day of February, 1883, when said lease was extended by a formal agreement of letting for the full term of five years from the first day of August, 1883, and containing all the terms and provisions of said original lease of August first, 1872, this said last-mentioned lease being executed by Walter S. Cox and by Augustus Jay and Francis Winslow, trustees, the two last named being substituted in the places of Carlisle P. Patterson and William H. Philip, then deceased or retired, and Eliza W.

Patterson, beneficiary under the will of Catherine Pearson, deceased, and the Baltimore and Ohio Railroad Company. A copy of said lease is herewith filed, marked "Complainant's Exhibit No. 2," and is prayed to be read and considered as a part hereof.

Fifth. That after the expiration of the term contained in the last-mentioned lease of 1883 the lease of said described property was renewed and continued in existence by the understanding and agreement of parties, by the acceptance and continuance of the provisions of said lease, and was admitted and acknowledged in communications from said trustees to this complainant.

Sixth. That on the seventh day of August, in the year 1892, after communications with the agents of the trustees, and as far as possible with the trustees, a renewal of said lease was prepared and was executed by Francis Winslow on the 17th day of October, 1892, at which time it was discovered that Walter S. Cox had by resignation ceased to be a trustee, and that Augustus Jay, the third trustee, was absent in Europe. This lease contained the same provisions of the before-mentioned leases, and was delivered to the Baltimore and Ohio Railroad Company on November 30, 1892, a copy of which, marked "Complainant's Exhibit No. 3," is filed herewith and is prayed to be read and considered as a part hereof. Under this last-mentioned lease the rents were regularly paid by the complainant and received by the trustees, and all of its provisions acted upon and fully acknowledged and lived up to by the parties.

Seventh. That at the expiration of the term named in the last-mentioned lease the complainant notified the trustees by notices addressed to them and sent care Thomas J. Fisher and Company, their agents at Washington, of its desire to renew the lease for the further term of five years. A copy of said notice is herewith filed, marked "Complainant's Exhibit No. 4," and is prayed to be taken and read as a part of this bill. A proper form of lease for said additional term was accordingly prepared by said company and forwarded to the agents of the trustees for execution by them. In reply to this notice of the company of its desire to renew said lease, which was forwarded to Mr. Winslow, trustee, the company received the following notification, to wit:

"The Baltimore and Ohio Railroad Company.

GENTLEMEN: In reply to your letter in relation to the lease of lots in square 710, this city, I beg to say that we are now prepared
4 to convey a good title, and prefer executing such conveyance to a renewal of the lease.

Very truly yours,

(Signed) FRANCIS WINSLOW."

And accompanying that notification was a letter from Mr. Winslow, dated September 27, 1897, addressed to M. J. Colbert, of the firm of Hamilton and Colbert, attorneys for the complainant, as follows:

"MATTAPOISETT, MASS., *Sept.* 27, 1897.

M. J. Colbert, Esq., Washington, D. C.

DEAR MR. COLBERT: I return the copy of the lease to the B. & O. R. R., which I would have sent to you before this had I not hoped an earlier return to Washington than I now expect would enable me to transact the business in person.

My understanding is that originally the R. R. Co., wishing to purchase the property, could not do so on account of some deficiency in the title. The immediate use of the property being necessary, a lease was made, but in such form as would compel the transfer of the lots at the price agreed whenever a clear title could be given. Pending the transfer, the R. R. Co. was to pay 6 % on the deferred payment.

The renewal of the lease has always been under the same reciprocal conditions and obligations, and I do not feel authorized to change them; but I suggest, as we are now able to furnish a satisfactory title, the present as a suitable time to transfer the property. I enclose a more formal notice in reply to a letter received from the railroad authorities.

Sincerely yours,

(Signed) FRANCIS WINSLOW."

A copy of said letter is herewith filed, marked "Complainant's Exhibit No. 5," and is prayed to be taken and read as a part of this bill.

Eighth. That the rent under said leases was paid by the complainant every six months—August and February; that when the rent for the six months from the first of August, 1897, to February first, 1898, became due a voucher therefor, made payable to Francis Winslow, trustee of Eliza W. Patterson, was sent to Mr. Winslow, care of Fisher and Company, agents; that at this time Mr. Winslow was absent in Nicaragua as a member of the canal commission and the voucher was sent to Mrs. Eliza W. Patterson, who, under the terms of the will of Catherine Pearson, was the recipient of the rents from this property. Mrs. Patterson returned said voucher to the company, requesting that one should be made out payable to herself and Judge Cox and the other trustees, as had been done, according to her letter, for many years, in order that she might be able to obtain the money thereon. A copy of this letter, marked "Complainant's Exhibit No. 6," is filed herewith, and is
5 prayed to be read and considered as a part of this bill. The complainant declined to do this, but upon arrangement between Mrs. Patterson and Thomas J. Fisher and Company, agents of said trustees, the voucher to Francis Winslow, above referred to, was endorsed "Francis Winslow, trustee, by Thomas J. Fisher and Company, attorneys," and on this endorsement the money on said voucher was obtained. When the next instalment of rent was due, in August, 1898, Mr. Winslow declined to negotiate the voucher for rents, claiming that the rights of the company had been terminated by his notice in September of 1897, hereinbefore set forth, and that since that time the company had been occupying the property as

tenants by sufferance. This contention on the part of Mr. Winslow, acting for the trustees, was denied by this complainant, which insisted that in 1897 there was a renewal of the lease which carried with it and continued the right of the company to purchase under the terms thereof; that the notice of September 27, 1897, given by Mr. Winslow was not sufficient in form and contained no definite declination to renew, but simply asserted a readiness to convey and a preference to sell rather than renew the lease; and, further, that the action of the parties and the receipt of the rent by Mrs. Patterson in February, 1898, and the endorsement of the check for said rent by Fisher and Company, agents of Winslow, was a distinct renewal of said lease. That and the succeeding vouchers forwarded as usual to Mr. Winslow, trustee, and made payable to his order, were retained until January 5, 1900, when they were returned to the company and a check given for the aggregate amount thereof under an agreement that the payment of said amount and its acceptance should be without prejudice to the rights of the respective parties and their claims relating to the lease of said land, or the renewal of said lease, or any question or matter connected therewith. The said agreement is contained in a receipt given to the Baltimore and Ohio Railroad Company by Messrs. Carlisle and Johnson, attorneys for the trustees, dated January 5, 1900, a copy of which is herewith filed, marked "Complainant's Exhibit No. 7," and is prayed to be read and considered as a part hereof.

Ninth. That negotiations conducted on the understanding that the rights and claims of the respective parties should not be prejudiced were carried on for a settlement of the differences between said parties, but without success; and the company's position is fully set forth in a letter dated February 18, 1899, written by J. D. McCubbin, Jr., real-estate agent of the Baltimore and Ohio Railroad Company, to Francis Winslow, trustee, a copy of which is herewith filed, marked "Complainant's Exhibit No. 8," and is prayed to be read and taken as a part hereof.

Tenth. That on January 23, 1900, this complainant, by the said J. D. McCubbin, Jr., notified the trustees of the declination of their offer for the rent of the lots referred to at the rental of $1,500.00 per annum, made through Messrs. Carlisle and Johnson, and reiterated its right to purchase under the agreement for lease, and
6 offered to purchase the property in accordance with the terms of the lease, and to pay the sum named upon presentation of a proper deed. A copy of this communication, marked "Complainant's Exhibit No. 9," is filed herewith and is prayed to be read and considered as a part of this bill.

Eleventh. That on March ninth, 1900, the defendants Francis Winslow, Augustus Jay, and The American Security and Trust Company, substituted trustees under the will of Catharine Pearson, deceased, began suit against this complainant, The Baltimore and Ohio Railroad Company, before L. I. O'Neal, a justice of the peace, for possession of said lots for default in payment of rent, but by agreement judgment for the plaintiffs was taken on April 17, 1900, and the case appealed to the supreme court of the District of Colum-

bia, where it was properly docketed as suit at law No. 43895, and stands for trial on the appeal calendar for the October term of said court.

Twelfth. That on August 15, 1900, the said defendants, Francis Winslow, Augustus Jay, and The American Security and Trust Company, substituted trustees under the will of Catherine Pearson, deceased, brought suit against this complainant, The Baltimore and Ohio Railroad Company, in suit at law No. 44106, for the use and occupation of said described lots from the first day of August, 1897, to the sixteenth day of April, 1900, claiming $6,500.00, with interest from the 16th day of April, 1900.

Thirteenth. This complainant is advised and believes, and therefore avers, that by reason of their notice to the trustees of August 4, 1897, of its desire to renew the lease for the further term of five years, and of the action of said trustees with regard thereto, and of the receipt of the six months' rent in February of 1898 by the agent of said trustees, and of the failure of said trustees to return said rent when the action of their agent became known, that the complainant's rights under said lease have been preserved, and that the provisions of said lease are in force and effect, including the complainant's right to purchase said property at the price named therein; that this complainant is entitled to the specific performance of the agreements of the original lease and its several renewals to lease said property with the right of purchase, as therein provided.

Fourteenth. That the rights of this complainant cannot be determined and protected in the suits at law named in paragraphs eleven and twelve, and that it is just and equitable that the defendants should be enjoined and restrained from the prosecution of these suits and from the institution of any and all other proceedings by these defendants in regard to said property and its possession pending the determination of this cause and the rights of the parties in interest.

Wherefore, by reason of the premises, the complainant prays as follows.

First. That the United States writ of subpœna issue to each and all of the defendants hereto, commanding them and each of them to appear and answer the exigencies of this bill.

7 Second. That said defendants, trustees, as aforesaid, be decreed to convey to this complainant the lots described herein at the price and according to the terms of said lease of August first, 1872, and the several extensions or renewals thereof, and if necessary for such conveyance to execute a formal lease of said lots to this complainant for the term of five years from the first day of August, 1897.

Third. That a preliminary restraining order issue herein forthwith, to be served on each and all of the defendants, restraining them and each and all of them, their agents, attorneys, and servants, from prosecuting the suits at law referred to and entered respectively upon the dockets of the supreme court of the District of Columbia as suits numbered 43895 and 44106 until the final determination of this cause.

Fourth. That the suits at law hereinbefore referred to and entered

upon the docket of the supreme court of the District of Columbia as suits numbered 43895 and 44106 be stayed, and that the defendants and each and all of them and their agents, attorneys, and servants be perpetually enjoined from proceeding in or prosecuting said suits.

And that the complainant may have such other and further relief as may to the court seem just and right in the premises.

The defendants to this bill are Francis Winslow, Augustus Jay, and The American Security and Trust Company.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
By J. D. McCUBBIN, Jr.,
Real-estate Agent.

HAMILTON & COLBERT,
Solicitors for Complainant.

I do solemnly swear that I have read the foregoing bill of complaint by me subscribed and know the contents thereof; that the matters and things therein stated on my personal knowledge are true, and the matters and things therein stated on information and belief I believe to be true.

J. D. McCUBBIN, Jr.

Subscribed and sworn to before me this 29th day of September, A. D. 1900.

GEO. W. HAULENBEEK,
[SEAL.] *Notary Public.*

Filed October 4, 1900. J. R. Young, Clerk.

"Complainant's Exhibit No. 1."

This agreement made this first day of August, in the year eighteen hundred and seventy-two, between Carlisle P. Patterson, William H. Philip and Walter S. Cox, trustees, of the first part and the Baltimore and Ohio Railroad Company, of the second part, witnesseth:

8 That the said parties of the first part, in consideration of the rents hereinafter reserved, do hereby demise, lease and to farm let, unto the said party of the second part, all those lots of ground in the city of Washington, in the District of Columbia, known as lots numbered nine (9), ten (10), eleven (11) and twelve (12) in square numbered seven hundred and ten (710), containing about forty-one thousand nine hundred and seventy-five square feet; to have and to hold to the said party of the second part, its successors and assigns for the full term of five years from the first day of August, instant, yielding and paying therefor yearly and for every year the sum of seven hundred and fifty-five $\frac{55}{100}$ dollars. And the said parties of the first part hereby agree to and with the said party of the second part, that at any time during the term aforesaid, on payment to them by said party of the second part of the sum of

twelve thousand five hundred and ninety-two dollars, they will convey the premises aforesaid to said party of the second part, its successors and assigns, by a good and sufficient deed in fee-simple, with all the title and estate therein of the said parties of the first part; and further that at or before the expiration of the term aforesaid, on the request of said party of the second part, its successors and assigns, they will renew this lease, with the same agreements and privileges as are herein contained for another term of five years or until such time as the said parties of the first part shall be prepared to convey the said premises as hereinbefore agreed, with a perfect title in fee-simple thereto; and in case said party of the second part shall omit to make said request, at or before the expiration of said term, the said party of the first part is required to notify said party of the second part of the expiration of said term and require it to exercise its election to renew said lease, and the privilege of renewing the same as aforesaid shall continue for three months after such notice.

In testimony whereof said parties of the first part have hereto set their hands, and the president of said company has here- affixed his signature on the first day of August, 1872.

(Signed in duplicate) C. P. PATTERSON,
WILLIAM H. PHILIP,
WALTER S. COX,
Trustees of Cath. C. Pearson's Will.
THE BALTIMORE AND OHIO RAILROAD COMPANY,
By JOHN W. GARRETT, *President.*

"COMPLAINANT'S EXHIBIT No. 2."

This agreement made this first day of February in the year eighteen hundred and eighty-three between Walter S. Cox, Augustus Jay, Francis Winslow and Eliza W. Patterson, of the first part and the Baltimore and Ohio Railroad Company of the second part, witnesseth: That the said parties of the first part in
9 consideration of the rents hereinafter reserved do hereby demise lease and to farm let unto the said party of the second part all those lots of ground in the city of Washington in the District of Columbia, known as lots numbered nine (9), ten (10), eleven (11) and twelve (12), in square numbered seven hundred and ten (710) containing about forty-one thousand nine hundred and seventy-five square feet to have and to hold to the said party of the second part, its sucessors and assigns for the full term of five years from the first day of August instant yielding and paying therefor yearly and for every year the sum of seven hundred and fifty-five $\frac{55}{100}$ dollars ($755.55).

And the said parties of the first part hereby agree to and with the said party of the second part that at any time during the term aforesaid on payment to them by said party of the second part of the sum of twelve thousand five hundred and ninety-two dollars they will convey the premises aforesaid to said party of the second part its successors and assigns by a good and sufficient deed in fee-

simple with all the title and estate therein of the said parties of the first part and further that at or before the expiration of the term aforesaid at the request of said party of the second part its successors and assigns they will renew this lease with the same agreements and privileges as herein contained for another term of five years, or until such time as the said parties of the first part shall be prepared to convey the said premises as hereinbefore agreed with a perfect title in fee-simple thereto and in case said parties of the second part shall omit to make the said request, at or before the expiration of said term, the said party of the first part is required to notify said party of the second part of the expiration of said term and require it to exercise its election to renew said lease and the privilege of renewing the same as aforesaid shall continue for three months after such notice.

In testimony whereof said parties of the first part have hereto set their hands and the president of the said company has hereto affixed his signature on the first day of February, 1883.

WALTER S. COX,
AUGUSTUS JAY,
FRANCIS WINSLOW, *Trustees.*
ELIZA W. PATTERSON.
BALTIMORE AND OHIO
RAILROAD COMPANY,
By —— ——.

DISTRICT OF COLUMBIA, *City of Washington,* } *To wit:*

—— —— personally appeared before the undersigned, a justice of the peace in and for the city of Washington, this — day of ——, 1883, and acknowledged the same to be their act and deed.

—— ——, *J. P.*

10 "COMPLAINANT'S EXHIBIT No. 3."

This agreement, made this seventeenth day of October in the year eighteen hundred and ninety-two, between Walter S. Cox, Francis Winslow and Augustus Jay, trustees of Mrs. Eliza Patterson, of the first part, and the Baltimore and Ohio Railroad Company, of the second part,

Witnesseth, that the said parties of the first part in consideration of the rents hereinafter reserved do hereby demise, lease and to farm let unto the said party of the second part all those lots of ground in the city of Washington in the District of Columbia known as lots numbered nine (9), ten (10), eleven (11), and twelve (12), in square numbered seven hundred and ten (710) containing about forty-one thousand nine hundred and seventy-five square feet.

To have and to hold to the said party of the second part its successors and assigns for the full term of five years from the first day of August eighteen hundred and ninety-two, yielding and paying therefor yearly and for every year the sum of seven hundred and fifty-five $\frac{55}{100}$ dollars. And the said parties of the first part hereby agree to

and with the said party of the second part that at any time during the term aforesaid on payment to them by said party of the second part of the sum of twelve thousand five hundred and ninety-two dollars they will convey the premises aforesaid to said party of the second part, its successors and assigns, by a good and sufficient deed in fee-simple with all the title and estate therein of the said parties of the first part, and further, that at or before the expiration of the term aforesaid, at the request of said party of the second part, its successors and assigns, they will renew the lease with the same agreements and privileges as herein contained for another term of five years or until such time as the said parties of the first part shall be prepared to convey the said premises as hereinbefore agreed with the perfect title in fee-simple thereto, and in case said party of the second part shall omit to make said request at or before the expiration of said term the said party of the first part is required to notify said party of the second part of the expiration of said term and require it to exercise its election to renew said lease and the privilege of renewing the same as aforesaid shall continue for three months after such notice.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, and the party of the second part has caused its corporate name to be hereunto subscribed by Orland Smith, its vice-president, and its corporate seal to be hereunto affixed, on the day and year first above written.

FRANCIS WINSLOW,
Trustee. [SEAL.]

Witness:
HERMAN E. GASCH,
As to F. W.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
By —— ——, *Vice-President.*

—— ——, *Secretary.*

11 "COMPLAINANT'S EXHIBIT No. 4."

BALTIMORE, MD., *August* 4, 1897.

Walter S. Cox, Francis Winslow, and Augustus Jay, trustees of Mrs. Eliza Patterson.

GENTLEMEN: I beg to notify you that the Baltimore and Ohio Railroad Company desires to renew for a further term of five (5) years the lease dated October 17th, 1892, between Walter S. Cox, Francis Winslow, and Augustus Jay, trustees of Mrs. Eliza Patterson, of the first part, and the Baltimore and Ohio Railroad Company, of the second part, of all those lots of ground in the city of Washington, District of Columbia, known as lots numbered nine, ten, eleven, and twelve, in square numbered seven hundred and ten.

Very truly yours,
(Signed) J. D. McCUBBIN, JR., *Agent.*

Original sent to Walter S. Cox, 1324 F St. N. W., Washington, D. C.

"COMPLAINANT'S EXHIBIT No. 5."

MATTAPOISETT, MASS., *Sept.* 27, 1897.

M. J. Colbert, Esq., Washington, D. C.

DEAR MR. COLBERT: I return the copy of the lease to the B. & O. R. R., which I would have sent to you before this had I not hoped an earlier return to Washington than I now expect would enable me to transact the business in person.

My understanding is that originally the R. R. Co., wishing to purchase the property, could not do so on account of some deficiency in the title. The immediate use of the property being necessary, a lease was made, but in such form as would compel the transfer of the lots at the price agreed whenever a clear title could be given. Pending the transfer, the R. R. Co. was to pay 6 % on the deferred payment.

The renewal of the lease has always been under the same reciprocal conditions and obligations, and I do not feel authorized to change them, but I suggest, as we are now able to furnish a satisfactory title, the present as a suitable time to transfer the property. I enclose a more formal notice in reply to a letter received from the railroad authorities.

Sincerely yours,

(Signed) FRANCIS WINSLOW.

"COMPLAINANT'S EXHIBIT No. 6."

WASHINGTON, 1321 18TH ST., *Jan'y* 31*st*, 1898.

Mr. Ijams, treasurer of the B. & O. Railroad Co.

DEAR SIR: I received this morning your check for the rent due me for my property on 1st St., east of the Baltimore and Ohio
12 Railroad Company. The check is made out to Mr. Francis Winslow, trustee; he is at present in Nicaragua as a member of the canal commission. I cannot have this check cashed without his signature, which I cannot get without sending the check to Nicaragua. To do so would be a great risk of having it lost. I will, therefore, request you to make it out to me or to Cox, Jay, and Winslow, as you have done for many years. Judge Cox and Mr. Augustus Jay are both here and getatable, and they will sign the check as they have done for years. I will inform Mr. Winslow of this and hope there will be no delay in returning the check to me properly endorsed. I remain yours truly obliged,

ELIZA W. PATTERSON.

"COMPLAINANT'S EXHIBIT No. 7."

WASHINGTON, D. C., *January* 5, 1900.

Received from the Baltimore and Ohio Railroad Company check dated December 26th, 1899, for $1,133.31, on account of rents on lots 9, 10, 11, and 12, in square 710, Washington, D. C., the said

payment being made and received without waiver of or prejudice to the claims of either the Baltimore and Ohio Railroad Company or said Francis Winslow, trustee, relating to the lease of said lots or the renewal of said lease, or any question or matter connected therewith.

(Signed) CARLISLE & JOHNSON,
Att'ys for Trustee.

"COMPLAINANT'S EXHIBIT NO. 8."

FEBRUARY 18TH, 1899.

Francis Winslow, Esq., New Milford, Conn.

DEAR SIR: I have received your letter of the 15th instant and have referred the question to our law department. They advise me, as I have before written you, that we have the right to purchase under terms of the lease, basing that opinion upon the form of your notice to the railroad company of September 27th, 1897. In that notice you do not definitely decline to renew, but say that you are prepared to convey, and prefer executing such a conveyance to a renewal of the lease.

Our law department thinks that in order to terminate the lease and put the company to its election to purchase or not that your demand must be a distinct refusal to renew. Especially is this true in view of the long continuance of the lease. The acceptance of rent after the notice, they think, would also operate as a waiver of the notice. Although the rent was not paid directly to you or to your agent with your knowledge, you being away at the time, yet the rent was finally received by you, and they think that, to avoid a waiver of the notice by acceptance of rent, it would have been necessary for you, immediately upon learning that the rent had been paid to your agent, to return it.

13 I appreciate, however, your kindness in not desiring to have any controversy over this matter, and think that we can adjust it without the aid of the court.

In your letter of January 25th you express a willingness to assist, as far as your influence goes, in making a lease or purchase if the road prefers, and in your letter of February 15th you think you would prefer to sell rather than lease, but would be governed, either in a sale or lease, by what you regard as present value. Without waiving in any way the right, which I am advised the company has to purchase the property under the terms of the old lease, I would be glad to receive from you a proposition to lease for such term as you may think best, say two to five years.

The present status of the company makes it a little troublesome to purchase property at this time, and therefore we would prefer a proposition to lease. This, I understand, you are willing to do, if we can agree upon a rental. I do not think our law department would consent to entertain a proposition to purchase, except upon the terms contained in the old lease, as they seem to be very confident as to the correctness of their position in regard to it, but to

avoid any controversy at this time I would be willing to take up the question of the amount of rental based, not upon the old lease, but upon the present value of the property.

Very truly yours, J. D. McCUBBIN, Jr.

"Complainant's Exhibit No. 9."

Copy.

Baltimore, Md., *January* 23, 1900.

Subject: Leasing certain lots in Washington, D. C., and as to sale of same.

Walter S. Cox, Francis Winslow, and August Jay, trustees of Mrs. Eliza Patterson.

Gentlemen: There has been submitted to this company through Messrs. Carlisle and Johnson, your attorneys, an offer to lease lots 9, 10, 11, and 12, in square No. 710, Washington, D. C., for a term of six years, at a rental of $1,500.00.

This company is advised that, under the agreement for the lease and purchase of said lots, it has the right to purchase said lots for $12,592. This company has always been ready to purchase the lots since the time it was first informed that the trustees were in a position to convey a good title, and so notified Mr. Winslow, at the same time stating to him that it would prefer to continue the existing arrangement. Negotiations as to the amount of rent which the company would be willing to pay were carried on for some time; during all of which time this company held the position that it has the right and was ready to purchase the property. A formal tender of the money would have been made had not Mr. Winslow notified the company that the trustees would not make the sale. The
14 company now renews its offer to purchase the property in accordance with the terms of the lease, and is ready to pay the money upon the presentation of a proper deed.

The company declines the offer submitted through Messrs. Carlisle and Johnson to lease at a rental of $1,500, and renews its offer made through its counsel, Messrs. Hamilton & Colbert, to lease for $1,000 a year for such time as it may require the property, if you prefer to make a lease at that rate rather — to sell at the price named in the lease.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
By J. D. McCUBBIN, Jr., *Real-estate Agent.*

Restraining Order, upon the Complainant Filing Undertaking as Required by Equity Rule 42.

The defendants are hereby restrained as prayed in the within-mentioned bill until further order, to be made, if at all, after a hear-

ing, which is fixed for the 15th day of October, 1900, of which take notice.

By the court:

JOB BARNARD, *Justice.*

Oct. 4th, 1900.

Service accepted for defendants Winslow & Jay.

CARLISLE & JOHNSON,
Att'ys for said Defendants.

Answer of Defendants.

Filed Oct. 15, 1900.

In the Supreme Court of the District of Columbia.

THE BALTIMORE AND OHIO RAILROAD Company
vs.
FRANCIS WINSLOW ET AL. } No. 21764. In Equity.

The joint and separate answer of the defendants, Francis Winslow, Augustus Jay, and The American Security and Trust Company, substituted trustees under the will of Catharine Pearson, deceased, to the bill of complaint of the Baltimore and Ohio Railroad Company against them in chancery exhibited.

These defendants, now and at all times reserving all right of objection and exception to the many imperfections, errors, irregularities, and deficiencies in the said bill, for answer thereto or to so much thereof as they are advised it is material and necessary for them to answer, answering, say:

1 and 2. Answering the first and second paragraphs of said bill, they admit the averments thereof to be true.

15 3. Answering the third paragraph of said bill, these defendants say they have no knowledge, information, or belief as to any negotiations between the complainant and these defendants' predecessors in this trust, Patterson, Philip, and Cox, having for their object the purchase of lots numbered nine (9), ten (10), eleven (11), and twelve (12), in square numbered seven hundred and ten (710), in the years 1871 and 1872, but upon information and belief they admit that the said Patterson, Philip, and Cox, in their capacity as trustees under the will of one Catharine Pearson, deceased, did execute certain agreement of lease, the terms of which, defendants are informed and believe, were as stated in said third paragraph, and of which they believe Complainant's Exhibit No. 1 to be a correct copy; but they are advised and believe, and therefore charge, that the said agreement was void as an agreement to sell the land therein referred to, because the said trustees were without any authority to sell or to agree to sell the same.

4. Answering the fourth paragraph of said bill, these defendants say that they have no knowledge or information as to the allegations

therein contained as to the understanding or agreement of the complainant and the then trustees under the will of Catharine Pearson prior to the first day of February, 1883, and if material they demand strict proof thereof. Upon information and belief they admit that an agreement of lease of the terms stated in said paragraph was executed by the trustees, as there stated, and upon information and belief they admit that Complainant's Exhibit No. 2 is a correct copy thereof, from which it appears that the complainant did not execute the same, but they deny that the same was a valid agreement to sell said real estate, as the trustees were not authorized, as required by the will of Catharine Pearson, to sell or to agree to sell the said real estate.

5. Answering the fifth paragraph of said bill, these defendants say that they deny the averments therein contained and aver the fact to be that on the thirtieth day of January, 1888, the complainant and the then trustees under the will of Catharine Pearson, namely, Walter S. Cox, Francis Winslow, and Augustus Jay, entered into a formal agreement of lease for said land, a copy of which is filed herewith, marked Defendants' Exhibit No. 1, and prayed to be read as a part of this answer, the original whereof is in the possession of these defendants and will be produced at the hearing. These defendants deny that the said agreement was a valid agreement of sale of said land, and deny that the trustees had any authority under the said will to make any sale or agreement to sell the same, because they aver the fact to be that the said real estate was devised to the trustees by the residuary clause of the will of Catharine Pearson, which is in the following terms, to wit:

"Seventhly. All the rest and residue of my estate real and personal wheresoever situated I give and devise to Carlile P. Patterson, William H. Philip & Walter S. Cox or the survivors & survivor of them to be by them held as trustees for the sole and separate use of my dear daughter Eliza Patterson during the term of her
16 natural life & so that the same shall not be liable for the debts or subject to the control contracts or engagements of her present or any after taken husband; to permit her by herself, or her special attorney appointed in writing to be signed by her to receive the annual income & profits of the same for her own sole and separate use, her receipt or that of her attorney so appointed as aforesaid alone to be an acquittance to the person or persons charged with the payment of such income or any part of the same & to the extent only therein expressed to have been paid; and if she please to occupy possess and use for her own account accommodation & convenience & that of her family any part of the property real and personal so held for her separate use & benefit she shall be allowed to do so; and if at any time the said Eliza Patterson shall in writing to be signed by her in the presence of & to be attested by a subscribing witness desire the said Carlile P. Patterson, William H. Philip and Walter S. Cox or the survivors & survivor of them to sell any part of the estate real & personal held by them for her separate use, for the purpose of changing the investment thereof, it shall be lawful for the said named trustees or the survivors or survivor of them

to sell the same for such purpose only & to transfer and convey the absolute estate in fee therein, to the purchaser thereof; to receive the proceeds of any & every such sale of the purchaser who shall not be required to see to the application thereof; & to invest the same in such manner as the said Eliza W. Patterson may require; and such new investment shall be held by the said trustees for the same use trusts & purposes & with the same powers & authority of sale and reinvestment as is herein declared of & concerning the original trust subject & separate estate.

And after the death of the said Eliza W. Patterson the said named trustees & their successors shall hold the said trust subject & separate estate—original and subsequently acquired by sale and reinvestment—for the use & benefit of any child, or children, of the said Eliza W. Patterson & the issue of any child or children of the said Eliza who may die leaving issue in the lifetime of the said Eliza; and such issue shall take the share or portion of the said estate which their parent or parents would have taken had they survived the said Eliza. And if the said Eliza W. Patterson shall die without leaving a child or children, or issue of any child or children, living at the time of her death, the said trustees and their successors shall hold the said trust subject and separate estate for my right heirs. And if it shall happen that either of the said trustees shall die, or become incapable of acting, or shall refuse to act in the execution of said trusts, then & in every such case, the continuing trustees or trustee shall from time to time nominate some other person or persons to be approved by the said Eliza W. Patterson to be trustee or trustees in the place & stead of the person or persons so dying, or becoming incapable or refusing to act and shall convey & settle the said trust subject & separate estate in such manner, that the same shall be legally vested in such continuing trustees or trustee and such person or persons so named & appointed to that
17 office for the same uses trusts & *pur*poses & with the same power & authority of administration sale & reinvestment as is hereinbefore declared of & concerning the said trusts subject & estate and the said new trustee or trustees shall have the same power to act in the premises in conjunction with the continuing trustee or trustees and as survivors of them, as if they had been originally named trustee or trustees in the premises in this my last will and testament."

And these defendants say that the said Eliza W. Patterson did not, in writing signed by her in the presence of and attested by a subscribing witness, or by any writing, desire the trustees to sell said real estate or agree to sell the same, and the said trustees were therefore without power and authority to sell or to agree to sell said land or any part thereof. A duly certified copy of said will of Catharine Pearson is herewith filed, marked Defendants' Exhibit No. 2, and prayed to be taken and read as part hereof.

6. Answering the sixth paragra-h of the bill, these defendants say that it is untrue that there were any communications with the agents of the trustees in or about August, 1892, because the trustees had never appointed any agent or agents authorized to act for them in

respect of the leasing of said land or the renewal of any such lease. It is true that an instrument in writing, of which Complainant's Exhibit No. 3 is a copy, was prepared in duplicate and sent to the defendant Winslow in care of Thomas J. Fisher and Co., real-estate brokers, who were the real-estate agents of the trustees for other property not embraced in these proceedings, and that the same were signed by the defendant Winslow. It is true that the said Walter S. Cox had, before that time, ceased to be a trustee by virtue of a decree of this court relieving him from the office passed on the thirtieth day of June, 1892, a copy of which decree is herewith filed, marked Defendants' Exhibit No. 3, and prayed to be taken and read as part hereof, but the defendant Jay was and continued to be trustee and never signed said written instrument; that the said written instrument signed in duplicate by the defendant Winslow were sent to the complainant on or about November 30th, 1892, and were both retained in its possession until on or about the — day of November, A. D. 1898, when upon request of said Winslow they were exhibited to him, and one of them delivered to him by the complainant, but neither of them was signed or in any manner executed by the complainant, as appears by the duplicate original in possession of defendants, and by the Complainant's Exhibit No. 3, which is a copy of the other duplicate original.

It is true that from August, 1892, until August, 1897, the complainant retained possession of the real estate herein described and paid rent at the rate mentioned in said unexecuted paper, which rent was received by the trustees, but these defendants deny that all or any of the provisions of said paper were acknowledged or lived up to by the parties save the continuance of possession and the payment of rent by the complainant.

18 And these defendants say that the said instrument of writing dated October 17th, 1892, of which Complainant's Exhibit No. 3 is a copy, is wholly void because never executed by the trustees or the complainant, because the provision for further renewal therein contained was not required by the terms of the lease of January 30th, 1888, the last agreement of the parties, and was not assented to by the trustees, one of whom, the defendant Jay, never saw said paper dated October 17th, 1892, and the provision for a sale to the complainant was *ultra vires*, being beyond the powers of the trustees, under the terms of the will creating them trustees, by which no sale or agreement for sale could be made by the trustees without the direction in writing of the said Eliza W. Patterson, signed by her in the presence of and attested by a subscribing witness, whereof the complainant had due notice, having dealt with the trustees always as trustees under the duly probated and recorded will containing the limitation upon their powers aforesaid, and the said Eliza W. Patterson never did direct or consent, in writing or otherwise, the said agreement to sell to the complainant in the said instrument of writing contained.

7. Answering the seventh paragraph of said bill, these defendants say that it is true that on or about the fourth day of August, A. D. 1897, the complainant addressed to the trustees Winslow and Jay

and to Walter S. Cox, who for more than five years had ceased to be a trustee, a letter of which Complainant's Exhibit No. 4 is a copy, which was sent in care of Thomas J. Fisher and Co., but these defendants deny that said Thomas J. Fisher and Co. were then or ever had been the agents of the trustees in relation to the leasing of said premises, but these defendants admit that said letter was forwarded to the defendant Winslow by said Thomas J. Fisher and Co. Thereafter the defendant Winslow, being in Massachusetts and not having any papers in his possession relating to the matter, wrote to the attorneys of the complainant for a copy of the lease, and on the 25th of August, 1897, the attorneys of the complainant sent to the defendant Winslow a copy of the lease prepared in 1892. On the 27th of September, 1897, the defendant Winslow wrote to M. J. Colbert, Esq., of counsel for complainant, the letter set out in the seventh paragraph of the bill enclosing a letter of the same date to the complainant, which is in substance set out in said paragraph without date and which is as follows:

"WASHINGTON, D. C., *September* 27, 1897.

To the Baltimore and Ohio R. R. Co., Baltimore, Md.

GENTLEMEN: In reply to your letter in relation to the renewal of the lease of the lots in square 710 of this city, I beg to say that we are now prepared to convey the property with a perfect title and prefer executing such conveyance to renewal of the lease.

Very truly yours, FRANCIS WINSLOW, *Trustee*."

These defendants deny that a proper form of lease was prepared by complainant and sent to the trustees, but, on the contrary,
19 aver that the lease was very materially different in terms from the last preceding one executed by the parties or the one of October 17th, 1892, which had not been executed, and provided for a conveyance to the Real Estate and Improvement Company of Baltimore City, but this lease was never executed by any of the parties. A copy of this lease is herewith filed, marked Defendants' Exhibit No. 4, and prayed to be taken and read as a part hereof. That at the time of the communications in the seventh paragraph of the bill referred to the defendant Winslow did not have access to the papers relating to the agreements between the parties, his cotrustee was in Europe, and he was without means of consulting his cotrustee or with counsel as to his powers and duties in the premises. But these defendants are advised and believe, and therefore aver, that by the terms of the lease executed by all parties in January, 1888, the complainant was entitled to a single renewal without any agreement for a further renewal and without any privilege of purchase, since the original privilege of purchase of January 30th, 1888, was *ultra vires* and void, of which fact the complainant had full notice, and that when the term limited in the unexecuted lease of October 17th, 1892, had expired the complainant had received and enjoyed all the rights and privileges to which, under the executed lease of January 30th, 1888, it had any legal or equitable right, and that prior to January, 1899, the defendant Winslow

informed the complainant that all its rights were at an end and that a new agreement upon a new basis must be made.

8. Answering the eighth paragraph of said bill, these defendants say it is true that for some time prior to August, 1897, the complainant had paid rent in semi-annual instalments in February and August, which payments were in the forms of orders to pay money by one officer of the complainant upon another of its officers. Upon information and belief they admit that after the defendant Winslow had refused to execute a new lease and had denied the right set up by the complainant the complainant on or about February 1st, 1898, sent one of these orders for rent from August, 1897, to January, 1898, to the trustees, in care of Thomas J. Fisher and Co., but they deny that said Fisher and Co. were the agents of the trustees. It is true that at that time the defendant Winslow was absent in Nicaragua as a member of the canal commission, and upon information and belief they admit that the order for said money was sent to their *cestui que trust*, Eliza W. Patterson, and they admit upon information and belief that Mrs. Patterson returned said order with the letter, a copy of which is marked Complainant's Exhibit No. 6. They admit upon information and belief that the said order was subsequently endorsed by Thomas J. Fisher and Co., as alleged, but they deny that said Thomas J. Fisher and Co. then had or ever had had any authority to endorse the name of said Winslow or of said Jay, either as trustees or personally, upon any check, draft, order, voucher, or other instrument for the payment of money or to sign the name of or bind either of them in any respect relating to their trusteeship or the business between said trustees and the complainant; and the endorsement alleged to have been made was wholly unauthorized by the defendant Winslow, Jay, or any other person having any authority from the trustees or either of them. It is true that, after the return to this country of the defendant Winslow, the defendant Winslow declined to negotiate the order for rent given in August, 1898, and claimed that the complainant's rights were at an end, but not, as alleged in said paragraph, by reason of his notice of September, but because the complainant's rights had expired by the fixed limitation of the contract creating them, and it is true that the agents of the complainant made the claims and contentions as to its alleged rights set out in said paragraph, all which claims and contentions were denied by said Winslow.

That it is true that the complainant sent to said Winslow in January, 1899, and August, 1899, orders issued by one of its officers upon another, directing the payment of money to the said Winslow, which were received by him, but the same were never presented for payment by said Winslow, but were returned to the complainant, and the complainant paid the amount thereof to the said Winslow under the conditions stipulated in the receipt of his counsel, a copy of which is filed as Complainant's Exhibit No. 7.

9. It is true that an attempt was made to effect an amicable settlement between the parties without result, and that the complainant's real-estate agent addressed to the defendant Winslow the letter, a copy of which is filed as Complainant's Exhibit No. 8, but these

defendants deny that said letter correctly sets forth the facts and deny that the contentions therein set up are sound or valid in law.

10. These defendants admit that the complainant, through its agent, addressed to the defendants Jay and Winslow and to Walter S. Cox, who for more than eight years had ceased to be a trustee, a letter, of which Complainant's Exhibit No. 9 is a copy, but they deny that said letter correctly states the facts, and they deny that the contentions therein made are sound in law.

11. Answering the eleventh paragraph of the bill, these defendants admit that they instituted suit for possession before Justice of the Peace O'Neil on the eighth of March, 1900 (and not on the ninth, as erroneously stated in said bill), and that judgment was rendered in favor of these defendants against the complainant. They deny that said suit was brought for failure to pay rent, although complainant had not paid rent, but the same was based upon a notice to quit, under the statute, given on the twenty-third of January, 1900, service of which was acknowledged on the 29th of January, 1900, by the counsel of the complainant. These defendants deny that judgment was rendered by agreement, but on the contrary, aver the fact to be that counsel for the complainant suffered judgment by default, informing counsel for the defendants that as an appeal would be taken in any event counsel for complainant did not care to try the case twice, and had therefore decided to suffer judgment by default and prosecute an appeal, which was accordingly taken by complainant on April 24th, 1900, and said appeal now stands on the trial calendar of this court for trial.

21 12. Answering the twelfth paragraph of said bill, these defendants admit the averments of fact therein contained to be substantially true.

13 and 14. Answering the thirteenth and fourteenth paragraphs of said bill, these defendants say that the same consist in assertions of matters of law, to which they are advised no other or further answer is required of them than that they deny the correctness of the propositions therein contained, and aver that the complainant has no rights whatsoever in the premises.

Further answering said bill, these defendants say that no agreement in writing was entered into to sell to the complainant the real estate in these proceedings described, nor to lease the same to it for any period of time after the agreement of January 30th, 1888, and that by the express provisions of the statute of frauds the complainant cannot maintain its suit without such agreement in writing; and these defendants claim the same benefit and advantage of this defense as if they had specially pleaded the same or demurred to the bill for that reason.

These defendants also say that they and each of them are and at all times were wholly without any authority to make any sale or agreement to sell any part of the real estate devised by the will of Catharine Pearson, deceased, without an express direction in writing so to do from Eliza W. Patterson, signed by her in the presence of and attested by a subscribing witness, of which the complainant had

full notice, and that no such authority was ever given by the said Eliza W. Patterson.

And these defendants further say that they have no beneficial interest or estate in the said real estate, but are merely trustees, and have no right or power to dispose of the same in the absence of proper direction and authority from the beneficiary of their trust.

Further answering said bill, these defendants say that by the terms of the agreement dated the 30th of January, 1888, which was duly executed by all of the trustees under the will of Catharine Pearson and by the complainant, it was provided, among other things, that at or before the expiration of the term of five years in that instrument granted, at the request of the complainant, the trustees would renew the lease, with the same agreements and privileges as were in that lease contained, for another term of five years; but these defendants are advised and believe, and therefore aver, that as matter of law that provision in the said agreement did not require them to give, nor entitle the complainant to receive, in such new lease, an agreement for another renewal, and that the utmost right of the complainant under the agreement of January 30th, 1888, was for a demise of the premises for a period of ten years and no longer, and that the complainant has had possession of said premises for more than thirteen years; and these defendants further say that though the said lease of the 30th of January, 1888, contained a privilege to the complainant to purchase said land, said privilege was *ultra vires* and void, because the trustees under the will had no authority to grant the same, but furthermore

22 these defendants show that the said privilege of purchase was limited to the case of the complainant's paying to the trustees, during the term of the lease, the sum of twelve thousand five hundred and ninety-two dollars; that the said complainant did not, during the term of five years demised by said lease, nor during the succeeding term of five years, pay the said sum, nor tender to the trustees the money, nor offer or agree to purchase the land, and that even had the said privilege of purchase been valid and had it been renewed in any subsequent agreement, which these defendants deny, the complainant never having availed itself of the privilege, is not entitled now to do so.

And these defendants further show that the complainant, through its agent, on two occasions before the filing of this bill, declared itself unwilling and unable to purchase said property, and stated that it was without the necessary funds therefor.

These defendants further show that the complainant is not entitled to have specific performance of the alleged agreement of lease and sale, because the said pretended contract lacks mutuality, in that the complainant, by the terms of the said alleged contract, was not bound to buy said land, nor to renew said lease, and the said complainant never having executed any agreement in writing after the expiration of the said agreement of January 30th, 1888, was not even suable for rent upon any such alleged agreement because of the express provisions of the statute of frauds, but was only liable in action at law upon a *quantum meruit* for use and occupation.

These defendants further show that the property in these proceedings described has greatly enhanced in value since 1872, when the first agreement for its lease was made with the complainant, and also since January, 1888, when the last agreement was made, and that the said property is now worth more than three times the amount which was stipulated to be paid for it under those agreements.

And these defendants further show that though the defendant Winslow in 1898 denied the complainant's right to purchase the said land or to any lease of the same, the complainant has slept upon its rights, if any it had, until the present time, and is therefore barred by its laches, and these defendants claim the same benefit and advantage of this defense as though they had specially pleaded the same or demurred to the bill for that reason.

Further answering said bill, these defendants say that they are informed and believe, and therefore charge, that this bill is instituted merely for delay; that the complainant was informed on the 31st of January, 1899, that the defendants were advised that the complainant was only a tenant at sufferance, and a lease or sale according to the terms of the agreement of January 30th, 1888, was refused. On the 23rd of January, 1900, it was served with a notice to quit said premises in accordance with the provisions of the landlord and tenant law of the District of Columbia. On the 8th of March, 1900, proceedings were instituted against it under that statute for possession, which proceedings, at the instance of the complainant,
23 were delayed until the 17th of April, when judgment was rendered against it. An appeal was then taken by the complainant, and nothing further was done until after the trial of appeals from justices of the peace was begun in this court, and the present bill was not filed until said appeal was about to be reached for trial; and these defendants aver that this course of the complainant has been such as to deprive it of the right to the extraordinary remedies of injunction and specific performance, through the aid of a court of equity, even if grounds for such relief had originally existed, which these defendants deny.

And, having fully answered, they pray to be hence dismissed with their reasonable costs.

FRANCIS WINSLOW, *Trustee.*
AMERICAN SECURITY & TRUST CO., *Trustee.*
WM. A. McKENNEY, *Trust Officer.*
AUGUSTUS JAY,
By WM. E. JOHNSON, *His Attorney.*

CARLISLE & JOHNSON,
Sol'rs for Defendants.

I do solemnly swear that I have read the aforegoing answer by me subscribed, and know the contents thereof, and that the matters and things therein stated on my personal knowledge are true, and those stated on information and belief I believe to be true.

FRANCIS WINSLOW.

Subscribed and sworn to before me this fifteenth day of October, A. D. 1900.

OSCAR LUCKETT,
[SEAL.] *Notary Public, D. C.*

(Endorsed:) No. 21764. In eq. The Baltimore & Ohio Railroad Company *vs.* Francis Winslow *et al.*, trustees. Joint and separate answer of all defendants.

Affidavit of Francis Winslow.

Filed October 15, 1900.

In the Supreme Court of the District of Columbia.

THE BALTIMORE AND OHIO RAILROAD Company *vs.* FRANCIS WINSLOW ET AL. } No. 21764. In Equity.

DISTRICT OF COLUMBIA, *ss:*

Francis Winslow, being duly sworn, deposes and says:

That he is one of the defendants in this cause and one of the trustees under the will of Catharine Pearson, deceased, and
24 one of those who executed the lease dated January 30th, 1888; that on or about the 17th of October, 1892, he signed in duplicate a new lease to the complainant similar in its terms with the one dated January 30th, 1888; that the new lease was prepared by the complainant or its officers, and this affiant believed that it was in accordance with the requirements of the lease of January 30th, 1888, and signed the same under that impression, and that it was never again seen by affiant until the fall of 1898, after the controversy between the complainant and this affiant as to the rights of the complainant arose, when it was exhibited to him in the office of the complainant, which had possession of both copies, neither of which were executed by this affiant's cotrustee, Augustus Jay, nor by the complainant. In December, 1897, this affiant left the United States and went to Nicaragua as secretary of the Nicaraguan canal commission; that during this affiant's absence in Nicaragua rent, at the rate paid under the lease of January 30th, 1888, was paid to the beneficiary under the trust by means of an order or draft of the complainant, which this affiant is informed and believes was drawn to his order and endorsed by the firm of Thomas J. Fisher and Company or some member thereof; that neither the said firm or any member thereof was the agent of this affiant or of his cotrustee, nor was the said firm nor any one of them authorized to make any agreement or arrangement with the complainant with respect to the leasing or selling of the real estate in these proceedings referred to, nor was the said firm nor any member thereof authorized to endorse any check, draft, order, or other paper with the name of this affiant or of his cotrustee, and this affiant had no knowledge of the payment of said rent or of the manner in which it had been effected until his return from Nicaragua, and neither of the trustees received any of the money.

In the summer of 1898 the complainant sent a similar order for the payment of money for rent of said premises which this affiant never presented or used in any way, and subsequently, in January and August of 1899, the complainant sent to this affiant similar orders, neither of which this affiant used.

In January, 1899, Mr. J. D. McCubbin, Jr., the agent of the complainant who signs the bill in this cause, wrote this affiant that he preferred to make a lease of the premises because he had no appropriation to purchase said land, and on the 18th of February, 1899, he again wrote to this affiant, saying:

"The present status of the company makes it a little troublesome to purchase property at this time, and therefore we would prefer a proposition to lease."

That at the time of so writing and for some time theretofore the complainant had gotten into financial difficulties, and was in the hands of a receiver under a decree of the courts of the United States, and this affiant is informed and believes was not at any time from January, 1888, to January, 1900, in a condition to purchase the land in question.

This affiant further says that the land in these proceed-
25 ings referred to has greatly increased in value since January, 1888, and that he is informed and believes that the square next to square seven hundred and ten, less available ground, has been recently sold for one dollar per foot, while the price at which complainant seeks to acquire this land is about thirty cents per foot.

This affiant further says that he and his cotrustee have no personal or beneficial interest in the property involved in this suit, their only interest being the proper discharge of their duties to the beneficiary under the terms of the will of Catharine Pearson, under which alone they exercise any authority in the premises.

Affiant further says that he had no opportunity to consult counsel in this matter until after his return from Nicaragua, when he was promptly advised that the complainant was not entitled to a renewal of the lease of January, 1888, or to the right of purchase contained in that lease, and that he promptly so advised the complainant, and has always maintained that position.

FRANCIS WINSLOW.

Subscribed and sworn to before me this fifteenth day of October, A. D. 1900.

OSCAR LUCKETT,
[SEAL.] *Notary Public, D. C.*

DEF'TS' EXHIBIT No. 1.

Filed Oct. 15, 1900.

This agreement made this thirtieth day of January in the year eighteen hundred and eighty-eight between Walter S. Cox, Francis Winslow and Augustus Jay, trustees of Mrs. Eliza Patterson, of the first part, and the Baltimore and Ohio Railroad Company of the second part.

Witnesseth, that the said parties of the first part in consideration of the rents hereinafter reserved do hereby demise lease and to farm-

let unto the said party of the second part all those lots of ground in the city of Washington in the District of Columbia known as lots numbered (9) nine (10) ten (11) eleven and (12) twelve in square numbered seven hundred and ten (710) containing about forty-one thousand nine hundred and seventy-five square feet.

To have and to hold to the said party of the second part its successors and assigns for the full term of five years from the first day of August 1887, yielding and paying therefor yearly and for every year the sum of seven hundred and fifty-five $\frac{55}{100}$ dollars. And the said parties of the first part hereby agree to and with the said party of the second part that at any time during the term aforesaid on payment to them by said party of the second part of the sum of twelve thousand five hundred and ninety-two dollars they will convey the premises aforesaid to said party of the second part its successors and assigns by a good and sufficient deed in fee-simple with all the title and estate therein of the said parties of the first
26 part and further that at or before the expiration of the term aforesaid at the request of said party of the second part its successors and assigns they will renew the lease with the same agreements and privileges as herein contained for another term of five years or until such time as the said parties of the first part shall be prepared to convey the said premises as hereinbefore agreed with the perfect title in fee-simple thereto and in case said par*ties* of the second part shall omit to make the said request at or before the expiration of said term the said part*y* of the first part *is* required to notify said party of the second part of the expiration of said term and require it to exercise its election to renew said lease and the privilege of renewing the same as aforesaid shall continue for three months after such notice.

In witness whereof the said parties of the first part have hereunto set their hands and seals, and the party of the second part has caused its corporate name to be hereunto subscribed by Samuel Spencer, its president, and its corporate seal to be hereunto affixed on the day and year first above written.

WALTER S. COX, *Trustee.* [SEAL.]
FRANCIS WINSLOW, *Trustee.* [SEAL.]
AUGUSTUS JAY, *Trustee.* [SEAL.]
THE BALTIMORE AND OHIO RAILROAD COMPANY,
By S. SPENCER, *President.*

[Seal of B. & O. R. R.]

Executed in duplicate.

Attest: ANDREW ANDERSON, *Secretary.*

Witness:
C. H. ARMFIELD,
As to Winslow.

Witness as to W. S. Cox:
MARY R. COX.

Witness as to Aug. Jay:
HENRY VIGNAUD.

(Endorsed:) No. 21764. In eq. The B. & O. R. R. *vs.* Francis Winslow *et al.* Defendants' Exhibit No. 1.

DEFENDANTS' EXHIBIT No. 2.

Filed Oct. 15, 1900.

The Last Will and Testament of Catherine Pearson, of Washington County, in the District of Columbia.

In the name of God—Amen.

I Catherine Pearson do make publish & declare this instrument of writing to be my last will & testament hereby revoking all other wills & testaments by me heretofore made.

27 First. I hold in my custody, as guardian of William N. Worthington the son of my late deceased brother William M. Worthington by an appointment from the orphans' court of the county aforesaid the sum of six thousand dollars it being a legacy from his uncle the late Dr. N. W. Worthington for this sum and the interest thereon, less nine hundred dollars which I paid to his mother for his account in three sums for which I hold her receipt I am accountable; and I direct that the same shall be paid by my executors hereinafter named without delay to such person or persons as may be entitled to receive the same.

Secondly. I charge my estate with the payment of my funeral expenses & testamentary expenses, just debts & other legacies bequeathed in this my last will & testament and direct that the same shall be speedily paid.

Thirdly. I give to my dear grandson Augustus Jay the sum of one thousand dollars as a testimony of my tenderest love for him; rejoicing sincerely on his account that it has pleased our Heavenly Father to bestow on him from other sources so large an inheritance that no further provision from me is required by or would be useful for him. If my said grandson shall not have attained the age of twenty-one years at the time of my death I direct that the said legacy or sum of one thousand dollars shall be invested by my said executors and accumulated for his use, and on his attaining that age the same shall be paid to him:—but if it shall happen—which God forbid—that my said grandson shall die before he attains the age of twenty-one—my will is that the said legacy or sum of one thousand dollars shall fall in and become part of the residuum of my estate & shall be disposed of as is hereinafter provided in reference to such residuum.

Fourthly. I give to my dear relative Catherine J. Gaston the sum of one thousand dollars as a testimony of my devoted love and affection for her and direct that the same be speedily paid to her by my executors hereinafter named.

Fifthly. I give to my beloved niece Eliza Worthington daughter of my brother John Worthington the sum of one thousand dollars as a testimony of my tender love and affection for her and direct that the same be paid to her by my executor hereinafter named.

Sixthly. I give to Ellen Farley the beloved daughter of John and Anna Farley the sum of one thousand dollars in testimony of my sincere love and affection for her and direct that my executors pay the same to her: and in the event of the death of the said Ellen Farley before my own decease, my will is that the said legacy or sum of one thousand dollars be paid by my executors hereinafter named to her brother Joseph Pearson Farley.

Seventhly. All the rest and residue of my estate real and personal wheresoever situated I give and devise to Carlile P. Patterson, William H. Philip, & Walter S. Cox or the survivors & survivor of them to be by them held as trustees for the sole and separate use of my dear daughter Eliza Patterson during the term of her natural life & so that the same shall not be liable for the debts or subject to
28 the control contracts or engagements of her present or any after-taken husband; to permit her by herself, or her special attorney appointed in writing to be signed by her to receive the annual income & profits of the same for her own sole and separate use, her receipt or that of her attorney so appointed as aforesaid alone to be an acquittance to the person or persons charged with the payment of such income or any part of the same & to the extent only therein expressed to have been paid:—and if she please to occupy possess and use for her own account accommodation & convenience & that of her family any part of the property real and personal so held for her separate use & benefit she shall be allowed to do so: and if at any time the said Eliza Patterson shall in writing to be signed by her in the presence of & to be attested by a subscribing witness desire the said Carlile P. Patterson, William H. Philip and Walter S. Cox or the survivors & survivor of them to sell any part of the estate real & personal held by them for her separate use, for the purpose of changing the investment thereof, it shall be lawful for the said named trustees or the survivors or survivor of them to sell the same for such purpose only & to transfer and convey the absolute estate in fee therein, to the purchaser thereof; to receive the proceeds of any & every such sale of the purchaser who shall not be required to see to the application thereof; and to invest the same in such manner as the said Eliza W. Patterson may require; and such new investment shall be held by the said trustees for the same use trusts & purposes & with the same powers & authority of sale and reinvestment as is herein declared of & concerning the original trust subject & separate estate.

And after the death of the said Eliza W. Patterson the said named trustees & their successors shall hold the said trust subject & separate estate—original and subsequently acquired by sale and reinvestment—for the use & benefit of any child, or children, of the said Eliza W. Patterson & the issue of any child or children of the said Eliza who may die leaving issue in the lifetime of the said Eliza & such issue shall take the share or portion of the said estate which their parent or parents would have taken had they survived the said Eliza. And if the said Eliza W. Patterson shall die without leaving a child or children or issue of any child or children, living at the time of her death, the said trustees & their successors

shall hold the said trust subject & separate estate for my right heirs. And if it shall happen that either of the said trustees shall die, or become incapable of acting, or shall refuse to act in the execution of said trusts, then & in every such case, the continuing trustees or trustee shall from time to time nominate some other person or persons to be approved by the said Eliza W. Patterson to be trustee or trustees in the place & stead of the person or persons so dying, or becoming incapable or refusing to act and shall convey & settle the said trust subject & separate estate in such manner, that the same shall be legally vested in such continuing trustees or trustee and such person or persons so named & appointed to that office for the same uses trusts & purposes & with the same power & authority of ad-
29 ministration sale & reinvestment as is hereinbefore declared of & concerning the said trusts subject & estate and the said new trustee or trustees shall have the same power to act in the premises in conjunction with the continuing trustee or trustees and as survivors of them, as if they had been originally named trustee or trustees in the premises in this my last will and testament.

I do hereby nominate and appoint Carlisle P. Patterson, William H. Philip and W. S. Cox to be the executors of this my last will and testament.

In testimony of all which I have hereunto subscribed my name & affixed my seal this fourth day of December in the year 1862.

CATHERINE PEARSON. [SEAL.]

Signed, sealed, published, & declared by the testatrix, Catherine Pearson as & to be her last will & testament in our presence, who have, at her request & in the presence of each other, hereunto subscribed our names as witnesses.

Witnesses:

JANE KENDALL.
AMOS KENDALL.
WM. STICKNEY.

(Endorsed:) No. 21764. In equity. The B. O. R. R. *vs.* Francis Winslow *et al.* Defendants' Exhibit No. 2.

Orphans' Court.

JUNE 30TH, 1868.

DISTRICT OF COLUMBIA, *Washington County,* } *To wit:*

This day appeared William Stickney, one of the subscribing witnesses to the aforegoing last will and testament of Catharine Pearson, late of Washington county aforesaid, deceased, and solemnly made oath on the Holy Evangels of Almighty God that he did see the testatrix therein named sign and seal said will; that she published, pronounced, and declared the same to be her last will and testament; that at the time of so doing she was, to the best of his apprehension, of sound and disposing mind, memory, and understanding, and capable of executing a valid deed or contract, and that his name as witness to the aforesaid will was signed in the

presence and at the request of the testatrix and in the presence of Jane Kendall and Amos Kendall, the other subscribing witnesses thereto.

Test: JAS. R. O'BEIRNE,
Register of Wills.

Orphans' Court.

JUNE 30TH, 1868.

DISTRICT OF COLUMBIA, *Washington County,* } *To wit:*

This day appeared Amos Kendall, one of the subscribing witnesses to the aforegoing last will and testament of Catharine Pearson,
30 late of Washington county aforesaid, deceased, and solemnly, sincerely, and truly affirmed that he did see the testatrix therein named sign and seal said will; that she published, pronounced, and declared the same to be her last will and testament; that at the time of so doing she was, to the best of his apprehension, of sound and disposing mind, memory, and understanding, and capable of executing a valid deed or contract, and that his name as witness to the aforesaid will was signed in the presence and at the request of the testatrix and in the presence of Jane Kendall and William Stickney, the other subscribing witnesses thereto.

Test: JAS. R. O'BEIRNE,
Register of Wills.

Orphans' Court.

JUNE 30TH, 1868.

DISTRICT OF COLUMBIA, *Washington County,* } *To wit:*

This day appeared Amos Kendall and solemnly, sincerely, and truly affirmed that he is well acquainted with the handwriting of Jane Kendall, one of the subscribing witnesses to the aforegoing last will and testament of Catharine Pearson, late of Washington county aforesaid, deceased, having often seen her write; that he verily believes the signature "Jane Kendall" to said will to be the genuine signature of the said Jane Kendall, and that it is well known to him that the said Jane Kendall has departed this life.

Test: JAS. R. O'BEIRNE,
Register of Wills.

[U. S. int. rev. stamps, $97.50.]

DISTRICT OF COLUMBIA, *To wit:*

I, Hiram J. Ramsdell, regis er of wills for the District of Columbia, do hereby certify that the foregoing is a true copy of the original will of Catharine Pearson, deceased, and the probates thereto filed and recorded in the office of the register of wills for the District of Columbia aforesaid, and also that the said will after having been proven by the witnesses whose names appear in the foregoing probates was by order of the supreme court of the District of Columbia, holding a special term for orphans' court business, duly admitted to

probate and record on the 30th day of June, A. D. one thousand eight hundred and sixty-eight.

In testimony whereof I hereunto subscribe my name and affix the seal of the said supreme court, special term for orphans' court business, this 15th day of December, anno Domini 1884.

H. J. RAMSDELL,

[SEAL.] *Register of Wills for the District of Columbia.*

31 DEFENDANTS' EXHIBIT No. 3.

Filed Oct. 15, 1900.

Supreme Court, District of Columbia.

Filed June 13, 1892. J. R. Young, Clerk.

WALTER S. COX, Trustee,
v.
ELIZA W. PATTERSON & Others. } In Equity. 13707, Eq. Doc. 33.

It appearing to the court that due notice of the object and substance of the bill of complaint was given to all the defendants by publication, and that said defendants have not appeared and made answer to the said bill, and that the same was taken for confessed against said defendants by order passed in this cause on the 4th day of May last—

It is by the court this 13th day of June, A. D. 1892, ordered, adjudged, and decreed that the prayer of the bill be granted, and that the appointment of Francis Winslow and Augustus Jay as trustees in the place of Carlisle Patterson and William H. Philip, deceased, under the will of Catharine Pearson, heretofore made by said Walter S. Cox, as surviving trustee under said will, be, and it is hereby, ratified and confirmed; and it is further adjudged and decreed that the said complainant, Walter S. Cox, be, and he is hereby, relieved and discharged from the trusts created by said will, and that the title and estate in and to all the property, real and personal, now held by said trustees be, and it is hereby, transferred to and vested in the said Francis Winslow and Augustus Jay, their heirs, executors, adm'n'rs, and assigns, subject to the trusts aforesaid, and that said Walter S. Cox do execute all such conveyances, transfers, or indorsements as may be necessary or convenient more completely to carry into effect the object of this decree.

A. C. BRADLEY, *Justice.*

[Seal of Sup. Court of the Dis. of Col.]

A true copy.
Test:

J. R. YOUNG, *Clerk,*
By M. C. CLANCY, *Ass't Clerk.*

(Endorsed:) No. 21764. In eq. The B. & O. R. R. *vs.* Francis Winslow *et al.* Defendants' Exhibit No. 3.

DEFENDANTS' EXHIBIT No. 4.

Filed Oct. 15, 1900.

This agreement, made this — day of August, A. D., 1897, between Francis Winslow and Augustus Jay, trustees of the estate of Eliza Patterson, deceased, of the first part, and the Baltimore and Ohio Railroad Company, of the second part, witnesseth,

32 That the said parties of the first part in consideration of the rents hereinafter reserved, have demised and let and do hereby demise and let unto the said Baltimore and Ohio Railroad Company, party of the second part, its successors and assigns, all those parcels of real estate situated in the city of Washington, District of Columbia known and designated as and being lots numbered nine (9), ten (10), eleven (11), and twelve (12), in square numbered seven hundred and ten (710), containing about forty-one thousand one hundred and seventy-five (41,175) square feet of ground, together with all the improvements and appurtenances thereto belonging.

To have and to hold the same with the appurtenances unto the said Baltimore and Ohio Railroad Company, its successors and assigns, for the full term of five years, commencing with the first day of August, A. D., 1897, and ending on the 31st day of July, 1902.

And in consideration of said demise and letting the said Baltimore and Ohio Railroad Company hereby agrees to pay to the said parties of the first part the sum of seven hundred and fifty-five $\frac{55}{100}$ dollars ($755.55) per annum.

And the said parties of the first part further agree with the party of the second part that at any time during the term aforesaid upon payment to them, the said parties of the first part, of the sum of twelve thousand five hundred and ninety-two dollars ($12,592.00), they will convey the premises aforesaid to the said party of the second part, or to the Real Estate and Improvement Company of Baltimore City, their or its successors and assigns, by giving a good and sufficient deed in fee-simple; and further that at or before the expiration of the term aforesaid, at the request of the said party of the second part, its successors and assigns, they will renew this lease, with the same agreements and privileges as are herein contained, for another term of five years, or until such time as said parties of the first part shall be prepared to convey the said premises as hereinbefore agreed with a perfect title in fee-simple thereto; and in case said party of the second part shall omit to make said request at or before the expiration of said term, the said parties of the first part are required to notify the party of the second part of the expiration of said term, and require it to exercise its election to renew said lease, and the privilege of renewing the same, as aforesaid, shall continue for three months after such notice.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals this — day of ——, A. D. 1897, and the said party of the second part hath caused these presents to be

signed in its corporate name, and its corporate seal to be hereto affixed by —— ——, its —, the day and year first above written, in duplicate.

—— ——. [SEAL.]
—— ——. [SEAL.]

Signed, sealed, and delivered in the presence of—
—— ——.

33 (Endorsed:) No. 21764. In eq. The B. & O. R. R. *vs.* Francis Winslow *et al.* Defendants' Exhibit No. 4.

Order Continuing Restraining Order.

Filed October 17, 1900.

In the Supreme Court of the District of Columbia.

THE BALTIMORE AND OHIO RAILROAD COMPANY
vs.
FRANCIS WINSLOW ET AL. } Equity. No. 21764.

This cause coming on to be heard upon the temporary restraining order issued herein on the fourth day of October, A. D. 1900, on complainant's petition and on the answer of the defendants, and having been argued by counsel and submitted to the court, it is, this 17th day of October, A. D. 1900, ordered that said restraining order be, and the same is hereby, continued in full force and effect until the final hearing of this cause, provided the complainant shall within four days tender to the defendant the full amount of any and all installments of rent unpaid which would be due to August 3, 1900, by the terms of the lease set up in the bill of complaint, the payment and acceptance of which shall not operate to prejudice or in any way affect the rights or claims of any of the parties hereto otherwise than to be a credit, as of the day of payment, upon such amount, if any, as the defendant may be ultimately entitled to recover from the complainant. It is further ordered that the complainant shall complete its testimony within thirty days from this date, and the defendants shall complete their testimony within ten days thereafter; the complainant to have five days after the close of the defendants' testimony within which to offer their testimony in rebuttal.

JOB BARNARD, *Justice.*

Depositions on Behalf of Complainant.

Filed Nov. 20, 1900.

In the Supreme Court of the District of Columbia.

THE BALTIMORE AND OHIO RAILROAD Company
vs.
FRANCIS WINSLOW ET AL. } In Equity. No. 21764.

At the request of Messrs. Hamilton & Colbert, solicitors for the complainant, I have this day fixed Wednesday next, November 14, 1900, at two o'clock in the afternoon of that day, and their law offices, No. 512 F street northwest, in Washington city, District of
34 Columbia, as the time and place when and where testimony on behalf of the complainant in the above-entitled cause will be taken before me.

ALBERT HARPER,
Examiner in Chancery.

November 10, 1900.

To Messrs. Carlisle & Johnson, solicitors for defendants:

Take notice that at the time and place fixed in the foregoing order we shall take testimony on behalf of the complainant in the above-entitled cause.

(Signed) HAMILTON & COLBERT,
Solicitors for Complainant.

November 10, 1900.

Service acknowledged this 10th day of November, 1900.

(Signed) CARLISLE & JOHNSON,
Sol'rs for Def'ts.

In the Supreme Court of the District of Columbia.

THE BALTIMORE & OHIO RAILROAD Company
vs.
FRANCIS WINSLOW ET AL. } In Equity. No. 21764.

Be it remembered that at an examination of witnesses begun and held on the 14th and 20th days of November, 1900, pursuant to notice and agreement, personally appeared before me, Albert Harper, an examiner in chancery of the supreme court of the District of Columbia, the within-named John D. McCubbin, Jr., Edward J. Stellwagen, George E. Hamilton, and William B. Turpin, who being produced as witnesses of lawful age for and on behalf of the complainant and being first duly sworn and cautioned to tell the truth, the whole truth, and nothing but the truth touching the matters at issue in the above-entitled cause, did depose and say as follows:

NOVEMBER 14, 1900—Wednesday, 2 o'clock p. m.

Met pursuant to foregoing notice.

Appearances: George E. Hamilton, Esq., of solicitors for the complainant; William G. Johnson, Esq., of solicitors for the defendants, one of whom, Francis Winslow, is present; also the examiner, and—

JOHN D. MCCUBBIN, JR., who, being produced as a witness of lawful age for and on behalf of the complainant and being first duly sworn, deposes and says:

Direct examination.

By Mr. HAMILTON:

Q. You are the real-estate agent of the Baltimore & Ohio Railroad Company?

A. Yes.

35 Q. And you have been in charge or control of the real-estate matters connected with that company for how long?

A. Since about October, 1896, as its real-estate agent.

Q. You have charge of the records relating to the real-estate matters of the Baltimore & Ohio Railroad Company?

A. Yes.

Q. I have here three leases—one dated August 1, 1872, between Carlisle P. Patterson, William H. Philip, and Walter S. Cox, trustees, and the Baltimore & Ohio Railroad Company; another dated February 1, 1883, between Walter S. Cox, Augustus Jay, and Francis Winslow, trustees; Eliza W. Patterson, and the Baltimore & Ohio Railroad Company, and the other dated October 17, 1892—between Walter S. Cox, Francis Winslow, and Augustus Jay, trustees, and the Baltimore & Ohio Railroad Company, copies of which three leases are filed as Complainant's Exhibits Nos. 1, 2, and 3 to the bill of complaint in this cause. Will you state, Mr. McCubbin, if these leases were among the records of the real-estate office of the Baltimore & Ohio Railroad Company.

A. Yes.

Q. Are they all the leases pertaining to the property involved in this suit among those records?

A. I have found one other, which I now hand to Mr. Hamilton, since the other leases were sent to him.

Mr. HAMILTON: I have here, Mr. Johnson, one other lease, dated January 30, 1888, between Walter S. Cox, Francis Winslow, and Augustus Jay, trustees, and the Baltimore & Ohio Railroad Company, which lease I only got possession of today.

Mr. JOHNSON: And copy of which is filed as Defendants' Exhibit No. 1 to the answer of the defendants in this cause.

Mr. HAMILTON: Solicitors for the complainant here give in evidence those four original leases.

Mr. JOHNSON: It is admitted by the defendants, through their solicitors, that the signatures appearing on said four leases are the genuine signatures of the parties thereto.

But the lease dated August 1, 1872, is objected to on the ground

of its irrelevancy and immateriality and because it does not appear to have been signed or properly authorized by Eliza W. Patterson, and also because its force and effect, if any, was superseded by a subsequent lease between the same parties.

The same objections are made to the lease dated February 1, 1883, and, further, that it was never executed by the Baltimore & Ohio Railroad Company.

The lease dated January 30, 1888, is objected to for the same reasons noted as to the first lease.

And the lease dated October 17, 1892, is objected to because it was not executed by the said trustees, nor by the Baltimore & Ohio Railroad Company, and because it was not properly authorized by Eliza W. Patterson.

NOTE.—It is agreed between counsel that the examiner
36 compare said original leases with the copies thereof, filed as Complainant's Exhibits Nos. 1, 2, and 3 to the bill of complaint, and Defendants' Exhibit No. 1 to the answer of the defendants in this cause, and that if said exhibits are true copies they be referred to and considered in evidence in lieu of the originals, which are to be returned to the complainant.

Q. Did you, Mr. McCubbin, have any communication with the trustees of the Patterson estate in regard to renewal of the lease relating to the property in controversy?

A. Yes.

Q. Will you state what was done by you in that regard?

A. I endeavored to locate the trustee; and, being unable to do so, I prepared notices and sent them to the addresses given me—one I think to Mr. Winslow, and one to Mr. Jay, and one to Judge Cox—the last of whom replied that he was no longer trustee.

Q. Did you send those notices to Judge Cox and to Mr. Winslow direct?

A. As I remember, I did. I sent one to Judge Cox at some place in North Carolina; later I sent a notice through Thos. J. Fisher & Co., of this city, who I understood were general agents for the Patterson estate, and that last notice was acknowledged by a letter from Mr. Winslow.

Q. Is this a duplicate copy of the notice (copy of which is Complainant's Exhibit No. 4 to the bill of complaint), under date of August 4, 1897, which you sent to Judge Cox?

A. Yes, sir; I find that I sent this notice to Judge Cox at Washington, D. C.

Mr. HAMILTON: Solicitors for the complainant here give that notice in evidence.

NOTE.—It is agreed between counsel that the examiner compare said notice with the copy thereof filed as Complainant's Exhibit No. 4 to the bill of complaint in this cause, and that if said exhibit be a true copy it be referred to and considered in evidence in lieu of the duplicate copy of said notice just produced.

Q. Did you receive any communication from Judge Cox in reply to that notice?

A. I did. I received this letter from him dated August 8, 1897.

Mr. HAMILTON: Soiicitors for the complainant here give that letter in evidence.

NOTE.—And the same is herewith filed in evidence, marked Exhibit A. H. No. 1. See page 32 of this record.

Q. Is this a duplicate copy of the notice sent to Mr. Francis Winslow?

A. Yes, sir; this is a copy of the notice sent to Mr. Francis Winslow at Newberne, North Carolina.

Mr. HAMILTON: Solicitors for the complainant here give that notice in evidence.

37 NOTE.—And the same is herewith filed in evidence, marked Exhibit A. H. No. 2. See page 33 of this record.

Q. Is this the letter you spoke of receiving from Mr. Francis Winslow, dated Washington, D. C., September 27, 1897, acknowledging receipt of that notice?

A. Yes.

Mr. HAMILTON: Solicitors for the complainant here give that letter in evidence.

NOTE.—And the same is herewith filed in evidence, marked Exhibit A. H. No. 3. See page 34 of this record.

Q. What, if anything, did you do after this with regard to the matter?

A. I think I forwarded notices through Thomas J. Fisher & Co., of this city, who I understood were general agents of the Patterson estate.

Q. And it was in reply to those notices that you received these answers filed here in evidence as Exhibits A. H. Nos. 1 and 3?

A. Yes.

Q. What, if anything, did you do after that in regard to this matter?

A. About that time I forwarded the old lease to Mr. George E. Hamilton, as counsel of the Baltimore & Ohio Railroad Company, requesting him to prepare a new lease.

Q. Are the letters dated July 31 and August 4, 1897, which I now show you, relating to a renewal of the lease?

A. Yes.

Mr. HAMILTON: Solicitors for the complainant here give in evidence said letters.

Mr. JOHNSON: The admission of which in evidence is objected to as being immaterial and irrelevant.

NOTE.—And the same are herewith filed in evidence, respectively marked Exhibit- A. H. Nos. 4 and 5. See pages 34 & 35 of this record.

Q. Is this the copy of the lease referred to in your letter of July 31, 1897 (Exhibit A. H. No. 4), together with memorandum of sug-

gestion mentioned in your letter of August 4, 1897—Exhibit A. H. No. 5?

A. Yes.

Mr. HAMILTON: Solicitors for the complainant here give in evidence said copy of lease and memorandum thereto.

Mr. JOHNSON: The admission of which in evidence is objected to as being immaterial and irrelevant.

NOTE.—And the same is herewith filed in evidence, marked Exhibit A. H. No. 6. See page 36 of this record.

Q. What other communication, if any, did you have with Mr. Francis Winslow regarding the matter of a renewal of the lease just referred to?

38 A. We had a conversation one day in my office, or perhaps in Mr. Bond's office, and my recollection is that Mr. Winslow wanted to raise the price specified in the lease, but I refused to entertain any such proposition. I think several letters passed between us on the same subject, and there was a proposition to renew the lease or take the property at the price stipulated in the old lease, but we did not get together.

Q. And no lease was executed?

A. No, sir; no lease was executed for a continuation of the terms.

Q. In the following January or February of 1898, did you have anything personally to do with a voucher sent by the Baltimore & Ohio Railroad Company and representing a half-yearly rent for this property?

A. A voucher was prepared in my office and signed by me as real-estate agent, in favor of Francis Winslow, trustee. I think Mrs. Patterson sent that voucher back, asking that it be made out to her or made in the name of Winslow, Jay, and Cox; but, having already been informed by Judge Cox that he was no longer trustee, I referred the matter to our counsel, Mr. George E. Hamilton, and I was advised to let the voucher remain as it was and send it through Thos. J. Fisher & Co., and accept the endorsement of that firm thereof, which we did, and paid the money thereon.

Q. Is this the voucher you refer to?

A. Yes, sir; being No. 24795.

Mr. HAMILTON: Solicitors for complainant here give in evidence said voucher.

NOTE.—And the same is herewith filed in evidence, marked Exhibit A. H. No. 7. See page 38 of this record.

Q. You spoke of a letter from Mrs. Patterson——

A. Yes; and there were several of them.

Q. Are these the letters you refer to as coming from Mrs. Eliza W. Patterson?

A. Yes.

Mr. HAMILTON: I cannot get at Mrs. Patterson to prove her signature to these five letters just produced.

Mr. WINSLOW: Her genuine signature is to each of those five letters just produced.

Mr. JOHNSON: And it is so admitted by solicitors for defendants.

Mr. HAMILTON: One of these five letters, dated January 31, 1898—that is, copy of it—is Complainant's Exhibit No. 6 to the bill of complaint in this cause.

NOTE.—It is agreed between counsel that the examiner compare said original letter of January 31, 1898, with the copy thereof filed as Complainant's Exhibit No. 6 to the bill of complaint in this cause, and that, if said exhibit be a true copy, it be referred to and considered in evidence in lieu of the original, which is to be returned to the complainant.

Mr. HAMILTON: Solicitors for the complainant here give in
39 evidence the other four letters of Eliza W. Patterson, dated respectively January 12th and 27th and February 3rd and 5th, 1898.

Mr. JOHNSON: Solicitors for the defendants object to the admission in evidence of said five letters, including the one of January 31, 1898, copy of which has just been filed in evidence as Complainant's Exhibit No. 6 to the bill of complaint in this cause, as being irrelevant and immaterial to the issues in this cause.

NOTE.—And said four letters are herewith filed in evidence, respectively marked Exhibits A. H. Nos. 8, 9, 10, and 11. See pages 39 & 40 of this record.

Q. Did you have anything else to do, Mr. McCubbin, with relation to this voucher (Exhibit A. H. No. 7) that you recall?

A. I think that I have stated all that I did in regard to that. I authorized the treasurer to send that draft or voucher (Exhibit A. H. No. 7) to Thos. J. Fisher & Co., and accept their endorsement as agent. That is about the last I had to do with it—that is, with the voucher.

Q. Had you at that time been advised of the willingness of Thos. J. Fisher & Co. to act in this particular?

A. That is my recollection.

Mr. JOHNSON: That is objected to as immaterial.

Q. Subsequent to this have you had any communication with the trustees or with Mr. Francis Winslow particularly in regard to the question of the lease of this property?

A. I have a batch of correspondence here that passed between myself and another official of the Baltimore and Ohio Railroad Company, and the trustees of Mrs. Eliza W. Patterson, and Mr. Francis Winslow in particular.

Mr. HAMILTON: Solicitors for the complainant here give in evidence said batch of correspondence, viz:

Letter dated January 20, 1899; W. H. Ijams, treasurer, to Francis Winslow, trustee;

Letter dated January 25, 1899; Francis Winslow to J. D. McCubbin, Jr.;

Letter dated January (or February) 28, 1899; J. D. McCubbin, Jr., to Francis Winslow;

Letter dated January 31, 1899; Francis Winslow to W. H. Ijams;

Letter dated February 15, 1899; Francis Winslow to J. D. McCubbin, Jr.;

Letter dated February 18, 1899; J. D. McCubbin, Jr., to Francis Winslow;

Letter dated April 18, 1899; C. H. Moran to Francis Winslow;

Letter dated April 21, 1899; J. D. McCubbin, Jr., to Francis Winslow;

Letter dated April 27, 1899; Francis Winslow to J. D. McCubbin, Jr., and

Letter dated January 23, 1900; J. D. McCubbin, Jr., to the trustees of Mrs. Eliza Patterson.

40 Mr. JOHNSON: The genuineness of said letters is admitted by solicitors for defendants, but their admission in evidence is objected to as being irrelevant and immaterial.

NOTE.—Copies of said two original letters of February 18, 1899, and January 23, 1900, being Complainant's Exhibits Nos. 8 and 9 to the bill of complaint in this cause; it is agreed between counsel that the examiner compare said originals with said exhibited copies, and that if said exhibits are true copies they be referred to and considered in evidence in lieu of the originals thereof to be returned to the complainant.

And the other- of said batch of letters just given in evidence, eight in number, are herewith filed in evidence, respectively marked Exhibits A. H. Nos. 12 to 19, inclusive. See pages 41 to 47 of this record.

Q. Outside of the correspondence just produced and here given in evidence as passing between the officials of the Baltimore & Ohio Railroad Company and Francis *Wilson*, trustee, relating to the matter of the lease of this property, did you have any other communication or connection with the trustees or with Mr. Winslow personally?

A. No, sir. I find several letters from Mrs. Patterson——

Q. (Interposing.) I am calling your attention to a time since August, 1897.

A. As I stated before, I had one interview with Mr. Winslow. That is the only one that I remember now, except the day we came over to the office of the justice of the peace.

Q. Then, Mr. McCubbin, do your records or those of the Baltimore & Ohio Railroad Company show that from the date of the 1st lease, which was in 1872, up to and including the voucher sent in 1897—Exhibit A. H. No. 7—the rent for this property was uniformly paid?

A. Yes.

Q. You have the vouchers therefor, have you not?

A. I have most of them here; some of them I could not get at because they were put away in boxes among the files.

Mr. JOHNSON: Solicitors for the defendants admit that all rent under the several leases of this property has been fully paid.

Q. Are there any other communications covering the time of the several leases from Mrs. Patterson and relating thereto?

A. I have a number of letters here from Mrs. Patterson to our treasurer asking prompt remittances of checks for the rent. She seemed to be rather anxious to get her rental nearly every six months.

Q. Are these some of those letters?

A. Yes, sir; and I think I can find some more.

Mr. JOHNSON: Solicitors for the defendants admit the genuineness of the batch of letters just produced from Eliza W. Patterson.

Mr. HAMILTON: Solicitors for the complainant here give said batch of letters, nineteen in number, in evidence.

41 NOTE.—And the same are herewith filed in evidence, respectively marked Exhibits A. H. Nos. 20 to 38, inclusive. See pages 47 to 48 of this record.

Mr. HAMILTON: Solicitors for complainant here give in evidence original letter dated Mattapoisett, Massachusetts, September 27, 1897, from Francis Winslow to M. J. Colbert, copy of which is Complainant's Exhibit No. 5 to the bill of complaint.

NOTE.—And it is agreed between counsel that said copy (Complainant's Exhibit No. 5 to the bill of complaint), after comparison by the examiner, may be referred to and considered in evidence in lieu of the original to be returned to the complainant.

Cross-examination.

By Mr. JOHNSON:

Q. I think you said, Mr. McCubbin, that you had one interview with Mr. Francis Winslow?

A. I said that I remembered only one interview with him.

Q. And that took place in Baltimore city, Maryland, either in your office or that of Mr. Bond—that is, in the offices of the Baltimore & Ohio Railroad Company?

A. That is my recollection.

Q. As I understand it, on that occasion or prior to that occasion a dispute as to the rights of the Baltimore and Ohio Railroad Company and of these trustees had already arisen?

A. I do not remember just the date of that interview with Mr. Winslow, and therefore I cannot say whether or not the dispute had arisen at that time.

Q. Was not that interview in the fall of 1898?

A. I think it was.

Q. Do you recall that on that occasion Mr. Winslow, as you say, wanted to make an arrangement either to rent or lease the property at a higher rate of rental, or to sell on some different basis than that described in the lease?

A. That is my recollection. That interview, I know, was after the acknowledgment of the notice to Mr. Winslow.

Q. And you declined to entertain propositions of that character at that time?

A. Yes.

Q. So that the controversy to some extent had already commenced between the officials of the Baltimore & Ohio Railroad Company and Mr. Francis Winslow on behalf of the trustees?

A. I think that was the opening of it. We did not understand, upon receipt of that letter from Mr. Winslow, that there was any controversy, but that Mr. Winslow merely preferred to sell than to lease the property.

Q. At all events, when you did see Mr. Winslow, that is the substance of what took place between you?

A. As I recollect, yes.

42 Q. Do you recall that in that interview Mr. Winslow told you it was his idea that the Baltimore & Ohio Railroad Company had no rights under the lease, but that it was a matter about which he intended to consult counsel?

A. I think he did.

Q. No agreement of any sort was ever reached between you and Mr. Winslow or the other trustees thereafter?

A. No agreement except the original agreement.

Q. No agreement was reached after that?

A. No.

Q. You became the real-estate officer of the Baltimore & Ohio Railroad Company in October, 1896?

A. Yes.

Q. So that you had nothing to do personally with the preparation or execution of any of the four leases which have been given in evidence here?

A. None of the executed leases.

Q. That is, those of 1872, 1883, and 1888 and 1892?

A. No.

Q. All of the letters and other papers which you have produced here, I suppose, came properly into your custody as the real-estate officer of the Baltimore & Ohio Railroad Company?

A. Yes.

Q. And such as did not come into your possession while you were that officer you found among the files when you took charge of that department of the Baltimore & Ohio Railroad Company?

A. I think all of the letters which have been given in evidence here, excepting the letters of Mrs. Patterson, are letters to and from me.

Q. But the letters from Mrs. Patterson and the leases that have been given in evidence here were in the files of that department?

A. The letters were attached to the original vouchers and the leases were in the files of leases.

Q. As the real-estate officer of the Baltimore & Ohio Railroad Company, they properly came into your custody when you took charge of that department?

A. The leases themselves did, but the vouchers with the letters attached to them were on file with the treasurer, and I withdrew them from the files of the treasurer.

Q. You are now the proper custodian of all papers pertaining to

this matter, whether they arose during or before your holding of that office?

A. Of all leases.

Q. And the correspondence with respect to them?

A. And the correspondence with respect to the leases, but understand that I am not the custodian of the vouchers. That is a matter for the treasurer.

Q. The vouchers for the payment of money pertain to the treasurer's office?

A. That is right.

43 Q. But all other papers pertaining to this matter would be in your office, and you would be the present custodian of them?

A. Yes.

Redirect.

By Mr. HAMILTON:

Q. Acting under my instructions, you have endeavored to bring down with you, for the purpose of offering in evidence here, all papers relating to this matter?

A. Yes.

Q. And you have done so?

A. Yes.

Q. Is The Baltimore & Ohio Railroad Company, the complainant in this cause, ready at this time to purchase or to lease, under a renewal of the lease, this property according to the terms of the old lease and the right of renewal of that lease which they claim?

A. Yes.

J. D. McCUBBIN, JR.

Subscribed and sworn to before me this 14th day of November, 1900.

ALBERT HARPER, *Examiner.*

EDWARD J. STELLWAGEN, being produced as a witness of lawful age for and on behalf of the complainant and being first duly sworn, deposes and says:

Direct examination.

By Mr. HAMILTON:

Q. You are a member of the real-estate firm of Thos. J. Fisher & Co. in this city?

A. I am.

Mr. HAMILTON: I have here, Mr. Johnson, copies of correspondence produced by Mr. Stellwagen from the files of his office; do you require production of the originals thereof?

Mr. JOHNSON: Solicitors for the defendants waive production of the originals of said correspondence and admit the genuineness

thereof, but object to its admission in evidence as being irrelevant and immaterial to the issues in this case.

Mr. HAMILTON: Solicitors for complainant here give in evidence said correspondence, viz:

Letter dated November 18, 1887; F. Winslow to "Dear Fisher;"

Letter dated November 23, 1887; Thomas J. Fisher to Francis Winslow;

Letter dated January 18, 1888; F. Winslow to Thos. J. Fisher & Co.;

Letter dated January 28, 1888; Thos. J. Fisher & Co. to Francis Winslow;

44 Letter dated October 8, 1892; Thos. J. Fisher & Co. to Francis Winslow;

Letter dated October 12, 1892; Thos. J. Fisher & Co. to Francis Winslow;

Letter dated October 15, 1892; F. Winslow to Thos. J. Fisher & Co.;

Letter dated October 17, 1892; Thos. J. Fisher & Co. to Francis Winslow;

Letter dated October 17, 1892; Thos. J. Fisher & Co. to W. N. Bolling;

Telegram dated October 18 (no year given); Thos. J. Fisher & Co. to W. N. Bolling;

Letter dated February 15, 1898; Hamilton & Colbert to Thos. J. Fisher & Co.;

Letter dated February 16, 1898; Thos. J. Fisher & Co. to Hamilton & Colbert;

Letter dated February 17 (no year given); Eliza W. Patterson to Mr. Stellwagen; and

Letter dated February 19, 1898; Thos. J. Fisher & Co. to Eliza W. Patterson.

NOTE.—And the same are herewith filed in evidence, respectively marked Exhibits A. H. Nos. 39 to 52, inclusive. See page- 58 to 65 of this record.

Q. Have you, Mr. Stellwagen, any personal knowledge of the matters and things referred to in the correspondence, outside of those letters just given in evidence?

A. None whatever.

Q. Had you any personal knowledge of the endorsement, "Pay to the order of the Riggs national bank, Francis Winslow, trustee, per Thos. J. Fisher & Co., attorney," on the back of this voucher made payable to the order of Francis Winslow, trustee, and given in evidence here as Exhibit A. H. No. 7?

A. Nothing further than that is the endorsement of my firm, and the further information that our cash books discloses the fact that it was passed to the credit of Eliza W. Patte-son on the 16th of February, 1897; that information I got from the books of our firm and not from my personal knowledge.

Q. It was passed to the credit of whom, do you say?

A. It was passed to the credit of Francis Winslow, trustee, and

subsequently, three days thereafter, it was deposited to the credit of Eliza W. Patterson at the Riggs national bank. I am not sure how that account is opened on the ledger of our firm.

Cross-examination.

By Mr. JOHNSON:

Q. This endorsement on this voucher, "Pay to the order of the Riggs national bank, Francis Winslow, trustee, per Thos. J. Fisher & Co., attorney," was that made by you or by some other member of your firm?

45 A. It was made by Mr. Thomas M. Gale, a member of our firm.

Q. Do you know of your firm having made any other endorsement on any order to pay money which was drawn to the order of Francis Winslow?

A. I have no recollection as to how payments to us may have been drawn. At that time we were collecting rent generally from the property of this estate, but not for this particular property.

Q. Do you know of your firm ever having endorsed in a similar manner any draft, check, or order, or other instrument, for payment to Francis Winslow?

A. I have no knowledge of that either way.

Q. Did you ever have from Mr. Francis Winslow at any time, as far as you personally know, any express authority, written or oral, to make any such endorsement?

A. Well, I will have to answer that, probably, in this way: that we were collecting what rents were collected here in the District of this estate for Messrs. Cox, Jay, and Winslow, trustees, and we paid the proceeds over to Mrs. Eliza W. Patterson monthly, or at whatever time they were collected, but not the rents from this particular piece of property. Now, that authority was a general authority that had been exercised for a long number of years without question. I do not know that we have any written authority for us to do it, but we simply went on and did it. As to this particular draft or voucher, Exhibit A. H. No. 7, I have no personal knowledge; as matter of fact, I was ill at home at the time; but if I had been there and requested to do this, Mr. Winslow being out of the country, I would have felt that I had authority enough to collect that money for the beneficiary, Mrs. Eliza W. Patterson, as we had collected the rents of the estate for her.

Q. The question is, as far as your personal knowledge goes, did your firm ever have any specific authority, oral or written, to endorse the name of Francis Winslow on any check, draft, or other order for the payment of money?

A. None but in the way I have just stated.

Q. As I understand, then, you thought the general authority of your firm, which had been previously and continuously exercised in the matter of the collection of rents of the Patterson estate, would, under the conditions then existing, have justified your firm in doing as was done in this instance?

A. Yes.

Q. And that is, as far as you personally know, the only theory on which it would have been done?

A. Yes.

Redirect.

By Mr. HAMILTON:

Q. You have been engaged in the real-estate business in this city for a number of years?

46 A. For about twenty-five years.

Q. Are you acquainted with lots 9, 10, 11, and 12, square 710, in this city?

A. I am.

Q. Will you state what, in your opinion, is the fair value of that property?

A. Taking it in its entirety, I should say it was worth from sixty-five cents to seventy-five cents per square foot.

Q. Have you any knowledge of its rental value?

A. I have not.

EDWARD J. STELLWAGEN.

Subscribed and sworn to before me this 14th day of November, 1900.

ALBERT HARPER, *Examiner.*

GEORGE E. HAMILTON, of solicitors for the complainant, states as follows:

I am one of the attorneys for the Baltimore & Ohio Railroad Company.

In the latter part of January or the 1st of February, 1898, a letter from Mrs. Eliza W. Patterson, asking that there should be no delay in the payment of the rent for her property, which is involved in this controversy, was referred to me, with a statement that the Baltimore & Ohio Railroad Company had been informed that there had been some change in the trusteeship of the Patterson estate, and asking how this draft or voucher, Exhibit A. H. No 7, should be made. Knowing that Thomas J. Fisher & Co., of this city, had some connection with the Patterson estate, I applied to them for information and was informed that Judge Cox was no longer an active trustee; that Mr. Francis Winslow, one of the trustees, was in Nicaragua, and that Mr. Augustus Jay, the other trustee, was in Paris. I was informed, also, by Thos. J. Fisher & Co. that they had heard from Mrs. Eliza W. Patterson in regard to getting this money, and that they were willing, if the voucher was made to Francis Winslow, trustee, to endorse it as agents of such trustees and pass the money to the credit of Mrs. Eliza W. Patterson in her account. I reported this to the Baltimore office of the Baltimore & Ohio Railroad Company, and the draft or voucher (Exhibit A. H. No. 7) was sent to me by Mr. Neal, then treasurer of that company, in a letter to our firm under date of February 14, 1898, for the purpose of having it

delivered to Thos. J. Fisher & Co., and this was accordingly done by me.

At the time I did this I had no knowledge that there was any serious difficulty or contention about the renewal of the lease. All communication after the return to us of the lease that we had sent to Mr. Winslow in the preceding summer had been conducted between Mr. Winslow and the real-estate agent in Baltimore of the Baltimore & Ohio Railroad Company, and it was not, I think, until the following spring, when I knew of the return of Mr.
47 Winslow to this country, that I was informed that there was a controversy over this question.

GEO. E. HAMILTON.

Subscribed and sworn to before me this 14th day of November, 1900.

ALBERT HARPER, *Examiner.*

Mr. HAMILTON: Solicitors for complainant here give in evidence this letter of Mr. Neal, just referred —.

NOTE.—And the same is herewith filed in evidence, marked Exhibit A. H. No. 53. See page 65 of this record.

(Adjourned to November 16, 1900, Friday, 10 a. m.)

NOVEMBER 20, 1900—Tuesday, 10 o'clock a. m.

Met pursuant to agreement.

Appearances: George E. Hamilton, Esq., of solicitors for the complainant; William G. Johnson, Esq., of solicitors for the defendants; also the examiner, and—

JOHN D. MCCUBBIN, JR., who, being recalled as a witness of lawful age for and on behalf of the complainant, further deposes and says:

Direct examination.

By Mr. HAMILTON:

Q. From the year 1888 to the year 1900 what was the financial condition of the Baltimore & Ohio Railroad Company?

A. From 1888 to 1896 it was fairly good. Then it went into the hands of receivers, and after that time, so far as ability to raise money was concerned, it was in a better condition than preceding that time.

Q. From 1896 what was its financial condition?

A. Very good.

Q. When did the Baltimore and Ohio Railroad Company go into the hands of receivers?

A. In February, I think, or March, 1896; I do not remember the exact date.

Q. When were the receivers discharged?

A. The 30th of June, 1899.

Q. From along about the year 1894 or 1895 did the Baltimore & Ohio Railroad Company expend any money in the purchase of property in the District of Columbia?

A. Yes; I am not clear as to dates, but in the past few years the Baltimore & Ohio Railroad Company has expended about a million of dollars in purchasing property for a depot site and a new line of road into the city of Washington.

Q. For permanent improvements and readjustment of its lines in the city of Washington?

A. Yes, sir; readjustment of its lines—of the terminal.

48 Q. Would the purposes of readjustment of the lines of the Baltimore & Ohio Railroad Company in the city of Washington affect the tracks of the company over the property in controversy here?

A. Yes; upon the construction of the proposed line the line over the Patterson property would be abandoned, and it was for that reason I preferred to make a lease rather than purchase the property; although the company has always been in a position to make a purchase of this property, while I did not actually have the appropriation in hand, I could have raised the money at any time on two or three days' notice.

Cross-examination.

By Mr. JOHNSON:

Q. The method of payment of rent since the Baltimore & Ohio Railroad Company has been a tenant of the property in controversy in this suit was by orders from one department of the company upon another?

A. Yes.

Q. And those orders were made payable to the trustees for the time being named in the lease?

A. Such is my recollection.

J. D. McCUBBIN, JR.

Subscribed and sworn to before me this 20th day of November, 1900.

ALBERT HARPER, *Examiner.*

WILLIAM B. TURPIN, being produced as a witness of lawful age for and on behalf of the complainant and being first duly sworn, deposes and says:

Direct examination.

By Mr. HAMILTON:

Q. You are a member of the real-estate firm of Plant & Turpin, in this city?

A. I am.

Q. How long have you been a real-estate agent operating in this *suit?*

A. For twelve years.

Q. In the conduct of your business have you had occasion to rent unimproved real property in this city?

A. I have.

Q. Are you acquainted with lots 9, 10, 11, and 12, square 710, in this city?

A. Only in a general way.

Q. Is there among real-estate brokers in this city any accepted rule of values to be derived from the rental of unimproved real property?

A. No, sir; the rule in such cases is to get all you can and get what you can.

49 Q. In your experience as a real-estate agent, do you know of any regulation that covers values in renting unimproved real property?

A. It has always been my rule to try to get as close to five per cent. on the fair value of property as I can get.

Q. Does that include payment of taxes?

A. That includes payment of taxes; that is, the rental on a five per cent. basis would throw the payment of taxes on the owner of the property.

Q. And you have handled a good deal of unimproved real property?

A. Yes, sir; that is, several pieces. The rental of unimproved real property is not a frequent thing, and none of us get as much of it as we would like.

Cross-examination.

By Mr. JOHNSON:

Q. The rental value of unimproved real property would be materially affected by its location and the use it is to be put to, would it not?

A. Oh, yes—I do not know about the use it is to be put to. Its location, of course, would increase its value, and the five per cent. basis I have spoken of, of course, would raise the rent.

Q. If a piece of unimproved real property was so situated that it was peculiarly adapted to some very important and valuable business and was the only property that could be utilized for that purpose, it would have a greater value than if it were a piece of property that had to be rented to anybody for whatever could be done with it?

A. It would have a greater selling value.

Q. How about the rental value?

A. I do not know that it would have a greater rental value, because unimproved real property which can be used for certain purposes is worth only so much on the market.

Q. Do you think that a piece of unimproved real property which lay on navigable water, and being the only landing place for vessels, would not have a greater rental value by reason of that fact than a piece of waste land somewhere in the body of the city?

A. I think my former answer covers that question. That ground would be valuable in its rental on a five per cent. basis, and that would carry you out well.

Q. Then, it would not make any difference what the ground was worth if you only got five per cent. gross?

A. I think I would be satisfied as a real-estate agent and broker with that.

WM. B. TURPIN.

Subscribed and sworn to before me this 20th day of November, 1900.

ALBERT HARPER, *Examiner.*

50 NOTE.—It is here stipulated and agreed between counsel that the area of the four lots in controversy is 41,975 square feet.

ALBERT HARPER, *Examiner.*

NOTE.—It is further stipulated and agreed between counsel that Complainant's Exhibit No. 7 to the bill of complaint in this cause is a true copy of the receipt by Messrs. Carlisle and Johnson, attorneys for trustee, to the Baltimore & Ohio Railroad Company, under date of January 5, 1900, for $1,133.31, paid on account of rents, etc., and that said exhibit may be referred to and considered in evidence in this cause.

Mr. JOHNSON: Solicitors for the defendants here give in evidence certified copy of the last will and testament of Catherine Pearson, deceased, being Defendants' Exhibit No. 2 to the answer of the defendants to the bill of complaint in this cause.

And also certified copy of decree passed June 13, 1892, in equity cause No. 13707, of Cox, trustee, *vs.* Patterson *et al.*, supreme court, District of Columbia, relieving Judge Cox from the office of trustee, being Defendants' Exhibit No. 3 to the answer of defendants to the bill of complaint in this cause.

NOTE.—And it is further stipulated and agreed between counsel that Defendants' Exhibit No. 4 to the answer of defendants in this cause is a true copy of the draft of lease submitted by counsel for the complainant to the defendant Francis Winslow for execution in 1897, and that said exhibit may be referred to and considered in evidence in this cause.

And thereupon solicitors for complainant and for the defendants respectively announce the testimony in this cause closed.

ALBERT HARPER, *Examiner.*

APPENDIX OF EXHIBITS.

EXHIBIT A. H. No. 1.

HOT SPRINGS, VA., *Aug.* 8, '97.

Mr. J. D. McCubbin, ag't, Baltimore, Md.

DEAR SIR: Your letter of the 4th inst. has been forwarded to me at this place.

I am no longer one of the trustees of Mrs. Patterson. Mr. Winslow attends to her affairs. Mr. Jay is in Europe. Mr. Winslow's

address is Newbern, N. C.; but he is somewhere at the North, I believe, at this time. I suppose that a letter addressed to him at Newbern will reach him at some time, and there will be no difficulty about the renewal of the lease.

Y'rs, &c., WALTER S. COX,
1636 *I St., Wash'n.*

(Stamped: Office of the real-estate agent B. & O. R. R., Aug. 10, 1897.)

51 EXHIBIT A. H. No. 2.

John K. Cowen and Oscar G. Murray, receivers Baltimore and Ohio railroad.

Office of real-estate agent.

BALTIMORE, MD., *August 10th*, 1897.

Walter S. Cox, Francis Winslow, and Augustus Jay, trustees of Mrs. Eliza Patterson.

GENTLEMEN: I beg to notify you that the Baltimore and Ohio Railroad Company desires to renew for a further term of five (5) years the lease dated October 17th, 1892, between Walter S. Cox, Francis Winslow, and Augustus Jay, trustees of Mrs. Eliza Patterson, of the first part, and the Baltimore and Ohio Railroad Company, of the second part, of all those lots of ground in the city of Washington, District of Columbia, known as lots numbered nine, ten, eleven, and twelve, in square numbered seven hundred and ten.

Very truly yours, J. D. McCUBBIN, JR., *Agent.*

Sent to Francis Winslow, Newbern, N. C.

EXHIBIT A. H. No. 3.

WASHINGTON, D. C., *Sept.* 27, 1897.

To the Baltimore & Ohio R. R. Co., Baltimore, Md.

GENTLEMEN: In reply to your letter in relation to the renewal of the lease of the lots in square 710 of this city, I beg to say that we are now prepared to convey the property with a perfect title, and prefer executing such conveyance to renewal of the lease.

Very truly yours, FRANCIS WINSLOW, *Trustee.*

EXHIBIT A. H. No. 4.

John K. Cowen and Oscar G. Murray, receivers Baltimore and Ohio railroad.

Office of real-estate agent, Baltimore, Md.

Subject: Lease from Walter S. Cox *et al.*, trustees, lots 9, 10, 11, and 12, square 710, Washington, D. C.

JULY 31, 1897.

Messrs. Hamilton and Colbert, 512 F street N. W., Washington, D. C.

GENTLEMEN: I enclose copy of above lease and certain correspondence.

While the lease provides for the privilege of renewing the same, three months after receipt of a notice from the lessor, it occurs to me that, on account of the possibility of a notice not reach-
52 ing this office, it would be well to provide for the renewal of the lease.

Will you kindly arrange and oblige?

Very truly yours, J. D. McCUBBIN, JR.

EXHIBIT A. H. No. 5.

John K. Cowen and Oscar G. Murray, receivers Baltimore & Ohio railroad.

Office of real-estate agent.

BALTIMORE, MD., *August 4th*, 1897.

Messrs. Hamilton & Colbert, counsel, Washington.

GENTLEMEN: I have sent notice (copy attached) to Mr. Francis Winslow, care Thomas J. Fisher, 1324 F street northwest, Washington, D. C. Will you kindly prepare a new lease and arrange for its execution? The present lease provides for a conveyance to the Baltimore & Ohio Railroad Company, but as the company may desire to have this property conveyed to the Real Estate and Improvement Company, I would suggest that you insert clause covering that point.

We are trying to reduce all six per cent. rentals by borrowing at a lower rate of interest, and by having the lease provide for a conveyance to the Real Estate and Improvement Company we would avoid the necessity for a release from the trustees of the B. & O. general mortgage.

Very truly yours, J. D. McCUBBIN, JR.

EXHIBIT A. H. No. 6.

This agreement, made this 17th day of October, in the year eighteen hundred and ninety-two, between Walter S. Cox, Francis Winslow and Augustus Jay, trustees of Mrs. Eliza Patterson, of the first part, and the Baltimore and Ohio Railroad Company, of the second part,

Witnesseth, that the said parties of the first part, in consideration of the rents hereinafter reserved, do hereby demise, lease and to farm-let, unto the said party of the second part all those lots of ground in the city of Washington, in the District of Columbia, known as lots numbered nine (9), ten (10), eleven (11), and twelve (12), in square numbered seven hundred and ten (710), containing about forty-one thousand nine hundred and seventy-five square feet.

To have and to hold to the said party of the second part, its successors and assigns, for the full term of five years from the first day of August eighteen hundred and ninety-two, yielding and paying therefor yearly, and for every year the sum of seven hundred and fifty-five $\frac{55}{100}$ dollars. And the said parties of the first part hereby agree to and with the said party of the second part that at any time during the term aforesaid, on payment to them by
53 said party of the second part of the sum of twelve thousand five hundred and ninety-two dollars, they will convey the premises aforesaid to said party of the second part, its successors and assigns—(memorandum attached:) or to the Real Estate and Imp. Co. of D. C. or such other person or body corporate as said railroad company may designate and request—) by a good and sufficient deed in fee-simple with all the title and estate therein of the said parties of the first part; and, further, that at or before the expiration of the term aforesaid, at the request of the said party of the second part, its successors and assigns, they will renew the lease with the same agreements and privileges as herein contained for another term of five years or until such time as the said parties of the first part shall be prepared to convey the said premises as hereinbefore agreed with the perfect title in fee-simple thereto, and in case said party of the second part shall omit to make said request, at or before the expiration of said term, the said party of the first part is required to notify said party of the second part of the expiration of the said term, and require it to exercise its election to renew said lease, and the privilege of renewing the same as aforesaid shall continue for three months after such notice.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, and the party of the second part has caused its corporate name to be hereunto subscribed by Orland Smith, its vice-president, and its corporate seal to be hereunto affixed, on the day and year first above written.

—— ——. [SEAL.]

(S'd) FRANCIS WINSLOW,
Trustee. [SEAL.]

Witness:
HERMAN E. GASCH,
As to F. W.

—— ——. [SEAL.]
THE BALTIMORE & OHIO
RAILROAD CO.,
By —— ——, *Vice-President.*

Attest: —— ——, *Secretary.*

54 EXHIBIT A. H. No. 7.

Form A. D. 604.

John K. Cowen and Oscar G. Murray, receivers.

The Baltimore and Ohio Railroad Co. to Francis Winslow, trustee of Eliza W. Patterson, Dr.

Real-estate department; dep't No., 2405; month of January, 1898.

Address: c/o Eliza W. Patterson, 1321 18th St. N. W., Washington, D. C.

Date of bill.

Feb'y 1st. For six months' ground rent of lots Nos. 9, 10, 11, & 12, square 710, Washington, D. C., being from August 1st, 1897, to Feb'y 1st, 1898..... $377 77

W. N. B.

Approved for the receivers.
OSCAR G. MURRAY.
WILD.

Approved.
J. D. McCUBBIN, JR.,
Real-estate Agent.

Approved.
M. N. GREENE,
Gen'l Mgr.

Approved for payment.
G. W. BOOTH,
General Auditor.

$377.77. BALTIMORE, MD., *Jan.* 29, 1898.

Pay to the order of Francis Winslow, trustee of Eliza W. Patterson, three hundred & seventy-seven & $\frac{77}{100}$ dollars, in full settlement of the above audited voucher.

A. F. DUNLEY,
Auditor of Disbursements.

To W. H. Ijams, treasurer Baltimore & Ohio railroad, Baltimore, Md.

(Written across the face:) For receivers.
(Written across the face in red ink:) Accepted. Payable at Citizens' national bank, Baltimore, Md., when properly endorsed. W. H. Ijams, treasurer.

(On the back.)

Audit No. 24795.

The Baltimore and Ohio Railroad Co., real-estate department, month of January, 1898. $377.77, favor of Francis Winslow, trustee

of Eliza W. Patterson. c/o Eliza W. Patterson, 1321 18th St. N. W., Washington, D. C.

Treasurer's charge. Accounts payable.

Examined and passed Apr. 5, 1898.

A. L. DUNHAM,
Special Master.

C[1].
E. T. Feb. 16, 1898.
Jan. 29, 1898.
Receivers B. & O. R. R. Co., aud'r of disb'ts' office, Jan. 29, 1898. Voucher issued.

55 All endorsements to be made on this side.

Pay to the order of the Riggs national bank.
FRANCIS WINSLOW, *Trustee*,
Per THOS. J. FISHER & CO., *Attorney*.

The Riggs national bank of Washington, D. C. Endorsement guaranteed.

Pay Nat'l Bank of Baltimore or order.
THE RIGGS NATIONAL BANK OF WASHINGTON, D. C.
A. T. BRICE, *Cashier*.

Rec'd payment.
H. H. O'CONNELL, *Cashier*.

Treasurer for receivers B. & O. R. R. Paid Feb. 17, 1898.

Received payment.
J. THOS. SMITH, *Cashier*.

EXHIBIT A. H. No. 8.

1321 18TH ST., WEST WASHINGTON, *Jan'y 12th*, '98.

Mr. Ijams, treasurer of Balto. & Ohio R. R. Co.:

I will thank you to send me the rent due the first of Feb'y (semi-annual payment) for the use of my property on 1st Str., Washington, N. W., as early as possible after it is due. Mr. Winslow, one of the trustees, is away, but Judge Walter Cox will sign the receipt.

Yours truly, ELIZA W. PATTERSON.

(Stamped: Receivers B. & O. R. R. Co., auditor's office, Jan. 29, 1898. Voucher issued. 24795.)

EXHIBIT A. H. No. 9.

1321 18TH ST., WASHINGTON, *Jan'y 27th*.

Mr. Ijams.

DEAR SIR: Will you be so kind as to send me the check, $377.77, semi-annual rent for my property occupied by the Balto. & Ohio

R. R., due Feb'y 1st, 1899, directed to me, 1321 18th St., Washington, and oblige?

Yours truly, ELIZA W. PATTERSON.

EXHIBIT A. H. No. 10.

1321 18TH ST., WASHINGTON, *Feby 3rd*, 1898.

Mr. Ijams.

DEAR SIR: I sent back to you the draft that you sent me on the 28th Jan'y, of $377.77, from Baltimore & Ohio R. R. Co. for rent due me. The draft was made out to Mr. Francis Winslow, trustee.
56 You have always heretofore made out the draft either to me or all three trustees. In writing you I told you that Mr. Francis Winslow was at present in Nicaragua, and I could not send the draft to him for his signature, and therefore I could not draw the money. I therefore returned the draft to you, requesting that have it made out to Cox, Jay & Winslow. Judge Cox & Mr. Jay will sign it and I can get the money.

I hope you got the draft all right. I sent it to you on the 1st Feb'y. Hoping I will hear from you soon, I remain,

Yours truly, ELIZA W. PATTERSON.

EXHIBIT A. H. No. 11.

1321 18TH ST., WASHINGTON, *Feb'y 5th*, 1898.

Mr. Ijams.

DEAR SIR: I returned to you a few days ago the draft which you sent me for the rent of my property on First St., Washington, by the railroad company of Balto. & Ohio of $377.77. The draft was made out to Mr. Francis Winslow, trustee, and I could not draw it, as Mr. Winslow is in Nicaragua, and I could not send it so far away to him, fearing it might be lost. I therefore returned it to you, with the request that you would sign it, as you always have done heretofore, Cox, Jay & Winslow, trustees. Judge Cox & Mr. Jay are both here, so that they can sign it at once and I can have the money.

By giving prompt attention to this small matter of business you will greatly oblige,

Yours truly, ELIZA W. PATTERSON.

EXHIBIT A. H. No. 12.

John K. Cowen and Oscar G. Murray, receivers.

Treasurer's office, Baltimore and Ohio railroad.

F. H. H.—"B." BALTIMORE, MD., *January* 20, 1899.

Mr. Francis Winslow, trustee for Eliza W. Patterson, Newberne, N. C.

DEAR SIR: We remitted to you on August 12, 1898, to Newberne, N. C., our voucher No. 960 for $377.77. Kindly advise if you have

received this voucher, as our record show- the voucher is still unpaid.

Yours truly,

W. H. IJAMS,
R.,
Treasurer.

57 EXHIBIT A. H. No. 13.

NEW MILFORD, CONN., *January 25th*, 1899.

Mr. J. D. McCubbin, Jr., Baltimore & Ohio building, Baltimore, Md.

MY DEAR MR. MCCUBBIN: I have received from Carlisle & Johnson their opinion as to the status of the lots in square 710. Briefly, they hold that the old lease is inoperative, first, because it was never properly executed, and, second, no matter how executed, it lapsed in August, 1897. The result is, as expressed by them, that the road is a tenant by sufferance, and the tenancy can be terminated by ordinary process in a magistrate's court.

As I explained to you, I have no disposition to do anything adverse to the interests of the road, but I hope the company will understand my position as a trustee: I will be very glad to assist, as far as my influence goes, in making a lease for the future upon equitable terms, or if the road prefers to purchase, we will very willingly consider any proposition that they may make, either for the lots or the whole square.

Yours very truly,

FRANCIS WINSLOW.

EXHIBIT A. H. No. 14.

John K. Cowen and Oscar G. Murray, receivers Baltimore and Ohio railroad.

Office of real-estate agent.

BALTIMORE, MD., *February 28th*, 1899.
Jan'y (?)

Francis Winslow, Esq., New Milford, Conn.

DEAR SIR: I beg to acknowledge receipt of your favor of the 25th instant, and note that your counsel claims that the railroad company is a tenant by sufferance, etc., etc.

On the other hand, our counsel advises me that we have the right to tender the money and demand a deed, but as I do not have an appropriation for this particulrr purchase, we prefer to arrange a lease, say, for two years, with the privilege of another year, at the same rental as the present lease, leaving out, if you prefer, the option to purchase.

This will tide us over until after the reorganization, when we will be in better shape to arrange for the purchase of the lot, if it is found to be necessary for our purposes.

Very truly yours,

J. D. McCUBBIN, JR.

EXHIBIT A. H. No. 15.

NEW MILFORD, CONN., *January* 31*st*, 1899.

Mr. W. H. Ijams, treas. B. & O. R. R., Baltimore, Md.

DEAR SIR: I am in receipt of your letter of January 20th in relation to the voucher for rent for the premises in Washington.
58 The voucher was received, but, pending advice of counsel, no action was taken in regard to it.

I am advised that the company are and for some time have been only tenants at sufferance, and I have notified Mr. McCubbin of that fact and invited a proposition from the company.

Pending a more definite arrangement that now exists, I do not feel justified in accepting payments without the company's full understanding of my position, and have therefore suspended action on the voucher.

Yours very truly, FRANCIS WINSLOW, *Trustee.*

EXHIBIT A. H. No. 16.

NEW MILFORD, CONN., *Feb.* 15*th*, 1899.

J. D. McCubbin, Esq., real-estate agent B. & O. R. R., Balto., Md.

DEAR SIR: I am in receipt of your letter of the 28th ult., containing proposition to lease the lots in square 710, Wash'n, and beg to say that I do not feel justified in accepting it.

We prefer to sell the property rather than lease it, but neither in case of sale or lease could we be governed by conditions or prices existing some twenty-five years ago.

As this matter has been pending now something over a year and a half, I will be much obliged if the company will come to some definite conclusion with regard to it.

Yours very truly, FRANCIS WINSLOW.

EXHIBIT A. H. No. 17.

John K. Cowen and Oscar G. Murray, receivers Baltimore and Ohio railroad.

Office of real-estate agent.

BALTIMORE, MD., *April* 18, 1899.

Mr. Francis Winslow, New Milford, Conn.

DEAR SIR: Replying to your letter of the 11th instant to Mr. J. D. McCubbin, Jr., I beg to advise that Mr. McCubbin has been away from town since receipt of your letter. He is expected back the first of next week, when it will be brought to his attention.

Very truly yours, C. H. MORAN.

59 EXHIBIT A. H. No. 18.

John K. Cowen and Oscar G. Murray, receivers Baltimore and Ohio railroad.

Office of real-estate agent.

BALTIMORE, MD., *April* 21, 1899.

Francis Winslow, Esq., trustee, New Milford, Conn.

DEAR SIR: Continued absence has prevented me from answering your letter of March 11, 1899. I have again submitted the questions involved to our law department, and am advised that, in the opinion of our counsel, the Baltimore & Ohio Railroad Company has the right to exercise the right given it under the agreement of October 17, 1892, to purchase the lots in square 710, Washington, D. C.

The Baltimore & Ohio Railroad Company is now ready to pay the sum of $12,592.00, the purchase price named in said agreement, and all rent due up to the date of transfer, and now offers to pay said sum upon the execution and delivery to it of a proper deed for the property. Will you please inform me if you are willing to accept said sum and convey the property? The Baltimore and Ohio Railroad Company is ready to accept a deed and pay the purchase-money at any time and place you may appoint.

Very truly yours, J. D. McCUBBIN, JR., *Agent.*

EXHIBIT A. H. No. 19.

NEW MILFORD, CONN., *April* 27, 1899.

Mr. J. D. McCubbin, Jr., c/o Baltimore & Ohio R. R. office, Baltimore, Md.

DEAR SIR: I am in receipt of your letter of April 21st, containing an offer of $12,592.00 by the company for the lots in square 710, and beg to say that we decline the proposition made.

While your letter of the 21st inst. does not definitely say so, I presume it to mean that the company declines both the propositions made in my letter of March 11th, and unless I hear from you to the contrary will consider such to be the fact.

I will be obliged if you will advise me as to what action you now suggest in the premises.

Very truly yours, FRANCIS WINSLOW.

EXHIBIT A. H. No. 20.

1446 N ST. WASHINGTON, *Aug. 4th*, 1884.

Treasurer of the Balt. & Ohio Railroad Company.

DEAR SIR: Will you please enclose the check for the semi-annual interest on the lease you have on my property in this city to my present address, 1446 N St. N. W., and oblige,

Yours truly, ELIZA W. PATTERSON,
Heir of the Estate of Catharine Pearson.

60 (Stamped: Baltimore & Ohio R. R. Co., auditor's office, Aug. 8, 1884. Warrant issued.) 15454.
$377.77, six months' ground rent, Wash'n. W. H. Ijams, treas.

EXHIBIT A. H. No. 21.

1446 N ST., *Feb'y 17th*, 1886.

Mr. Ijams, treasurer of B. & O. R. R. Co.:

Mrs. E. W. Patterson respectfully requests that the semi-annual interest due on the lease of her property to the B. & O. R. R. Co. on the 18th Feb'y, 1886, shall be paid at your earliest convenience and check remitted to her at her present residence, 1446 N Str. N. W., Washington city, D. C.

This property belongs to the estate of Catharine Pearson, of which Mrs. E. W. Patterson is the heir.

(Stamped: Baltimore & Ohio R. R. Co., auditor of disb'ts' office, Feb. 19, 1886. Voucher issued.) 17288.

EXHIBIT A. H. No. 22.

MAGNOLIA, MASS., *July 5th*, 1886.

Mrs. E. W. Patterson will be obliged to the treasurer of the Balt. & Ohio R. R. Company if he will have the check for the payment of the semi-annual interest upon the lease of her property sent to her at this place, care of Mr. Roberts, Sea View cottage, Magnolia, Mass.

(Stamped: Baltimore & Ohio R. R. Co., auditor of disb'ts' office, Aug. 7, 1886. Voucher issued.) 39021.

Last payment, Feb'y 19, '86, for 6 mo. ending Feb'y 1, '86. Rec'd, #17288, $377.77.
W. H. Ijams, tr., $377.77, due 1 Aug., '86.
Paid by check No. 1786, 3rd, N. Y.

N. S. PENDLETON.

EXHIBIT A. H. No. 23.

ASHEVILLE, *July 21st*, 1886.

Mr. Ijams.

DEAR SIR: Will you be so kind to send to me to my present address, Asheville, North Carolina, the check for the semi-annual payment of ground rent of my property leased to the Balt. & Ohio R. R. Company, due the first of August, 1887, & oblige,

Yours truly, ELIZA W. PATTERSON.

Mr. Ijams, treasurer of Balto. & Ohio R. R. Co., Baltimore, Md.

W. H. Ijams, tr., $377.77. Citizens' check No. 104,052.
(Stamped: Baltimore & Ohio R. R. Co., auditor of disb'ts' office, Aug. 3, 1887. Voucher issued. 50265.)

61 EXHIBIT A. H. No. 24.

WASHINGTON, *Feb'y 1st*, 1887.

Mrs. Patterson presents her compliments to the treasurer of the Balt. & Ohio R. R. Company, and requests that he will forward to her the semi-annual payment for the ground rent of her property occupied by the Metropolitan branch of that road, now due.

MRS. CARLISLE P. PATTERSON,
1446 *N St. N. W.*

Last payment, August 7, 1886, for 6 mos. ending July 1, '86.
Rec'd, #39021, $377.77.
$377.77. W. H. Ijams, tr. Citizens' check No. 101,120.

(Stamped: Baltimore & Ohio R. R. Co., auditor of disb'ts' office, Feb. 2, 1887. Voucher issued. 19235.)

EXHIBIT A. H. No. 25.

ASHEVILLE, *Jan'y* 26, 1888.

Mr. Ijams.

SIR: Will you kindly forward the semi-annual payment for the lease of my property, $377.77, to the Balt. & Ohio R. R. Company, due Feb'y 1st, to me at this place, Asheville, North Carolina, where I am residing at present, & oblige,

Yours respectfully, ELIZA W. PATTERSON.

W. H. Ijams, tr., Washington, D. C. Citizens' check #107,402.

(Stamped: Baltimore & Ohio R. R. Co., auditor of disb'ts' office, Feb. 1, 1888. Voucher issued. 16008.)

EXHIBIT A. H. No. 26.

ASHEVILLE, *August 1st*, 1888.

Mr. Ijams.

SIR: Will you please to send the check $377.77, ground rent, for property lease to Balto. & Ohio Railroad Company, due August 1st, to me to this place, Asheville, North Carolina, Buncombe Co., and oblige,

Yours respectfully, ELIZA W. PATTERSON.

W. H. Ijams, tr., Washington, D. C., estate of Catharine Pearson. Citz. check #110,742.

(Stamped: Baltimore & Ohio R. R. Co., auditor of disb'ts' office, Aug. 3, 1888. Voucher issued. 39410.)

62 EXHIBIT A. H. No. 27

JAMESTOWN, *July 15th*, 1889.

Mr. Ijams:

I am now at Jamestown, Rhode Island, and will thank you to have the semi-annual payment of ground rent due Aug. 1st by the Balt. & Ohio Company for my property on 1st Str. northeast, Washington, D. C., $377.77, forwarded to me at this place, care of Mrs. Tenant, box H, P. O.

Yours respectfully, ELIZA W. PATTERSON,
Heir of the Estate of Catharine Pearson, Deceased.

Last payment, Feb. 5, '89, for 6 mos. ending Feb. 1, '89. Rec., 15081, $377.77.

(Stamped: Auditor of disbursements, B. & O. R. R. Co., Jul- 19, 1889. Baltimore & Ohio R. R. Co., auditor of disb'ts' office, Aug. ', 1889. Voucher issued. 34937.)

EXHIBIT A. H. No. 28.

SAN FRANCISCO, CAL., *Jan'y 11th*, 1890.

Mr. Ijams, treasurer of the Baltimore & Ohio R. R. Company:

I will thank you to enclose the check for the payment of the semi-annual interest due Feb'y 1st, 1890, upon property rented from me by the B. & O. R. R. Company, $377.77, to Judge Walter S. Cox, of Washington, one of my trustees, as heir to the estate of Mrs. Catharine Pearson, deceased. The check requires the signature of one of the trustees. I am spending the winter in San Francisco, Cal., and it will be more convenient to have the check sent to him direct rather than to me out here. He will sign it and send the receeipt to you and deposit the check to my credit in Riggs & Co.'s bank, Washington. Hoping that there will be no difficulty about the money for the semi-annual rent being paid promptly, I remain yours,

ELIZA W. PATTERSON.

Please notify me when the payment is made Feb'y 1st, 1890.

Last payment, Aug. 1, '89, for 6 mos. ending Aug. 1, '89. Rec., 34937, $377.77.

(Stamped: Auditor of disbursements B. & O. R. R. Co., Jan. 20, 1890. Baltimore & Ohio R. R. Co., auditor of disb'ts' office, Feb. 1, 1890. Voucher issued. 12662.)

EXHIBIT A. H. No. 29.

JAMESTOWN, RHODE ISLAND, *July 1st*, 1890.

Mr. Ijams.

DEAR SIR: I will thank you to forward to me, Mrs. E. W. Patterson, at this place, Jamestown, R. I., the check for $377.77, the
63 semi-annual rent for property lease from the estate of the late Catharine Pearson, due 1st August, by the Balt. & Ohio R. R.

Company. I will sign the receipt for the same and return it to you, the treasurer of the Balt. & Ohio R. R. Company.

Very truly yours, ELIZA W. PATTERSON.

(Stamped: Baltimore & Ohio R. R. Co., auditor of disb'ts' office Jul- 25, 1890. Voucher issued. 33100.)

EXHIBIT A. H. No. 30.

GERMANY, LANGEN SCHWALBACH, *July 14th*, 1891.

Mr. Ijams, treasurer of Balt. & Ohio R. R. Co.:

Will you please send the check for the semi-annual payment of the rent for the property on 1st Str. N. E., Washing- city, to the estate of Mrs. Catharine Pearson, $377.77, to Lt. Francis Winslow, trustee, for his signature, to Mattapoisett, Mass., and oblige,

Yours truly, ELIZA W. PATTERSON.

(Stamped: Baltimore & Ohio R. R. Co., auditor of disb'ts' office, Aug. 8, 1891. Voucher issued. 38579.)

EXHIBIT A. H. No. 31.

LANGEN SCHWALBACH, GERMANY, *July 13th*, 1892.

Mr. Ijams, treasurer of Balto. & Ohio Railroad Co.

DEAR SIR: I will thank you to send the check for the semi-annual payment of the rent for my property on 1st Str. N. E., Washington, D. C., to Lt. Francis Winslow, trustee, for his signature, to Newberne, North Carolina, $377.77, due August 1st, 1892, and oblige,

Yours truly, ELIZA W. PATTERSON.

(Stamped: Baltimore & Ohio R. R. Co., auditor of disb'ts' office, Aug. 1, 1892. Voucher issued. 4298.)

EXHIBIT A. H. No. 32.

1705 NEW HAMPSHIRE AVENUE, WASHINGTON, D. C.

Mr. Ijams.

DEAR SIR: Will you please to send the check due Feb'y 1st, 1894, for semi-annual rent of my property on 1st Str. N. E. to Balt. & Ohio R. R. Co., to Francis Winslow, Esq., trustee, Newberne, North Carolina, for his signature.

Yours truly, ELIZA W. PATTERSON.

(Stamped: Baltimore & Ohio R. R. Co., auditor of disb'ts' office, Jun- 3, 1893. Voucher issued. 27466.)

64 EXHIBIT A. H. No. 33.

JAMESTOWN, R. I., *Aug.* 21*st*, 1893.

W. N. Bolling, Esq., R. est. dept., B. & O. R. R., Baltimore, Md.

DEAR SIR: Will you please send check for rent of the lots in sq. 710, Wash'n, D. C., due estate of Catharine Pearson, to me at the above address, and oblige,

Yours truly, FRANCIS WINSLOW.

(Stamped: Baltimore & Ohio R. R. Co., auditor of disb'ts' office, Aug. 26, 1893. Voucher issued. 7138.)

EXHIBIT A. H. No. 34.

NORTH HATLEY,
PROVINCE OF QUEBEC, CANADA, *July* 11*th*, 1895.

Mr. Ijams, treasurer of Balt. & Ohio R. R. Company.

DEAR SIR: Will you be so kind as to forward the check for the rent of my property to the Balt. & Ohio R. R. Co. due August 1st, 1895, to me or to my trustee, Lt. Francis Winslow, to this place, care of Mrs. Addie Le Baron, North Hatley, province of Quebec, Canada.

Yours truly, ELIZA W. PATTERSON.

(Stamped: Baltimore & Ohio R. R. Co., auditor of disb'ts' office, Aug. 1, 1895. Voucher issued. 4152.)

EXHIBIT A. H. No. 35.

1321 18TH STR., WASHINGTON, D. C., *Jan'y* 7*th*, 1896.

Treasurer of Balt. & Ohio R. R. Company:

The semi-annual rent for my 1st Str. property will be due Febr'y 1st, 1896. I will be much obliged to you if you will send the draft for the amount, $377.77, to Mr. Francis Winslow, trustee of my mother's estate, Mrs. Catharine Pearson, to Newberne, North Carolina, where he is at present, for his signature.

Yours truly, ELIZA W. PATTERSON.

Mr. W. N. Bolling, R. E. A. Please note treasurer.

(Stamped: Baltimore & Ohio R. R. Co., auditor of disb'ts' office, Feb. 1, 1896. Voucher issued. 28829.)

EXHIBIT A. H. No. 36.

NORTH HATLEY,
PROVINCE OF QUEBEC, CANADA, *July* 15*th*, 1896.

Mr. Ijams, treasurer of Balt. & Ohio R. R.

DEAR SIR: I will thank you to forward to me at my present address, at the head of this note, the check for the interest due
65 me for rent of my property to the Balt. & Ohio R. R. Co., in Washington, D. C., August first—semi-annual rent, $377.77.

Yours truly, ELIZA W. PATTERSON.

Mrs. Eliza W. Patterson, care of Charles Jackson, North Hatley, province of Quebec, Canada. Mr. Francis Winslow, who is here, will sign the check before presenting it to bank for collection. Resp'y referred to Mr. W. N. Bolling, R. E. A., for his information. Ass't treas'r, H. 8, 13, '96.

(Stamped: Receivers B. & O. R. R. Co., aud'r of disb'ts' office, Aug. 21, 1896. Voucher issued. 5080.)

EXHIBIT A. H. No. 37.

1321 18TH STR., WASHINGTON, *Jan'y 9th*, 1897.

Mr. Ijams, treasurer of Balt. & Ohio Railroad Co.

DEAR SIR: The interest upon the money due me by the Balt. & Ohio Railroad Company for the use of my property on 1st Str. east, in Washington, D. C., Feb'y 1st, 1897—I will thank you to send the check to Mr. Francis Winslow, trustee, for his signature—to him at Newberne, North Carolina.

ELIZA W. PATTERSON.

(Stamped: Receivers B. & O. R. R. Co., aud'r of disb'ts' office, Jan. 25, 1897. Voucher issued. 21626.)

EXHIBIT A. H. No. 38.

SANDWICH, MASS., *July 23rd*, 1897.

Mr. Ijams.

DEAR SIR: Will you be so kind as to forward to me at this place the semi-annual rent due Aug. 1st for the use of my property on 1st Str. northwest, in Washington?

Mr. Winslow, trustee, is here with me and will sign the check here. Please address me: Mrs. Eliza W. Patterson, Sandwich, Mass., care of Mrs. Joseph Miller.

Yours truly, ELIZA W. PATTERSON.

For Mr. McCubbin. W. H. I., tr. 7, 26.

(Stamped: Receivers B. & O. R. R. Co., aud'r of disb'ts' office, Aug. 6, 1897. Voucher issued. 3882.)

EXHIBIT A. H. No. 39.

NORFOLK, VA., *Nov.* 18, 1887.

DEAR FISHER: Will you please let one of your clerks, as soon as possible, look over the record books in the record office and see if a lease from Cox, or Cox, Jay, & Winslow, to the B. & O. R. R. is recorded; and, if so, when it expired?

If I am not mistaken, the lease was made in 1881 or 1882,
66 and was for 5 years, with privilege of renewal. I want to make them renew at once, and we are required to give notice of expiration. Please let me know the result of your interview with

Glover. I saw him for a minute, and he appeared dreadfully frightened. Let me know about Hillyer also, and if you have made deposit to my credit, as I may want to draw on it next week. Two days' investigation here is of a very encouraging nature. Address Elizabeth City.

Yours truly, F. WINSLOW.

EXHIBIT A. H. No. 40.

Thomas J. Fisher & Co., real-estate brokers, &c.

WASHINGTON, D. C., *Nov. 23rd*, 1887.

Lieutenant Francis Winslow, U. S. N., Elizabeth City, N. C.

DEAR LIEUT.: Your favor of Nov. 18th dated at Norfolk, Va., duly received.

We have had the records examined and do not find any lease recorded to the B. & O. R. R. Co. We enclose herewith a copy of the original lease, together with a letter from Mr. Bolling, their engineer, under date of Jan. 25th, 1883, which will probably afford all the information you desire on the subject.

Mr. Glover, as well as myself, are very much averse to going into stock speculation, but will deposit $100 each at Riggs & Co.'s, subject to your order, to be used in the preliminary investigation in regard to the oyster fields, the status of which can be determined after the question has been settled whether oysters can be cultivated on the land in question. There will be no difficulty in selecting other desirable parties here who will go into the arrangement as soon as I hear from you.

Very truly yours, THOS. J. FISHER.

EXHIBIT A. H. No. 41.

RALEIGH, N. C., *Jan.* 18, 1888.

Messrs. Thos. J. Fisher & Co., Washington, D. C.

DEAR MR. FISHER: Yours of the 17th has just been rec'd. I think I had better leave the matter of Graham's renewal to you. You can decline or not, using me as authority, as you think most advisable. I suppose there has been no impairment of security.

Will you please let me know whether in executing a lease (to the B. & O. R. R.) it is necessary to acknowledge before a notary public and attach certificate of clerk of court or merely sign?

I guess the R. R. question will not be settled this Congress, either. Am just up here and in a mess of arrears of work.

Yours truly, F. WINSLOW.

67 EXHIBIT A. H. No. 42.

Thomas J. Fisher &. Co., real-estate brokers, &c.

WASHINGTON, D. C., *January 28th*, 1888.

Lieutenant Francis Winslow, U. S. N., care agricultural department, Raleigh, N. C.

DEAR LIEUTENANT: Your favor of the 18th of Jan. was duly received; also the three deeds which were sent us by Mr. Jones, the notary.

In the matter of renewal of the Graham notes, being for small amounts, we notified him that they will have to be paid when due, as it is best to get your funds in larger sums, these notes being under $100.

In executing the lease to the B. & O. we do not think it would be necessary to acknowledge before a notary public, as a signature witnessed is all that is necessary. Still, as railroad people are sometimes very particular about such matters, if you have a notary handy it might be just as well to have him take your acknowledgment.

Very truly yours, THOS. J. FISHER & CO.

EXHIBIT A. H. No. 43.

Thomas J. Fisher & Co., real-estate brokers, &c.

WASHINGTON, D. C., *October 8th*, 1892.

Francis Winslow, Esq., Newberne, N. C.

DEAR SIR: Herewith we hand you duplicate leases with the B. & O. R. R. Co. for lots in square 710. Please execute these leases and return to us and we will forward them to the R. R. Co.

Very truly yours, THOS. J. FISHER & CO.
MALONE.

EXHIBIT A. H. No. 44.

Thomas J. Fisher & Co., real-estate brokers, &c.

WASHINGTON, D. C., *October 12th*, 1892.

Mr. Francis Winslow, Jamestown, Rhode Island.

DEAR SIR: We beg to hand you herewith a letter received by us from Mr. J. Miller, making an offer of $50 per month for the part of square 710 leased by the B. & O. R. R. Co.

* * * (Not legible in press copy book.) * * *

We sent you a few days ago duplicate leases for the portion of this square leased by the B. & O. R. R. Co.

We forwarded these leases to Newberne, North Carolina.

Have you as yet received them?

Very truly yours, THOS. J. FISHER & CO.
MALONE.

Dictated:
J. J. M.

68 EXHIBIT A. H. No. 45.

JAMESTOWN, R. I., *Oct.* 15, 1892.

Messrs. Tho-as J. Fisher & Co.

DEAR SIRS: I enclose B & O. leases. Will you please compare with the original lease and see that they correspond before delivering. I have not a copy at hand, but I suppose Mr. Hamilton has, and if not I think the lease has been recorded.

We do not care to accept Mr. Miller's office, it not being high enough. We will give him a lease for a term of years for $1,200 per an.

Yours truly, F. WINSLOW.

EXHIBIT A. H. No. 46.

Thomas J. Fisher & Co., real-estate brokers, &c.

WASHINGTON, D. C., *October* 17*th*, 1892.

Mr. Francis Winslow, Jamestown, R. I.

DEAR SIR: We beg to acknowledge receipt of your favor of the 15th inst., enclosing duplicate leases with the B. & O. R. R. Co. We will forward same at once.

Yours very truly, THOS. J FISHER & CO.
MALONE.

Dictated:
J. J. M.

EXHIBIT A. H. No. 47.

Thomas J. Fisher & Co., real-estate brokers, &c.

WASHINGTON, D. C., *October* 17*th*, 1892.

Mr. W. N. Bolling, B. & O. R. R. Co., Baltimore, Md.

DEAR SIR: We beg to hand you herewith duplicate leases for lots 9, 10, 11 & 12, square 710, executed by Francis Winslow, Esq. Kindly acknowledge receipt.

Yours very truly, THOS. J. FISHER & CO.
MALONE

Dictated:
J. J. M.

EXHIBIT A. H. No. 48.

Telegram.

WASHINGTON, D. C., 18 *October*, —.

W. N. Bolling, B. and O. R. R., Balto., Md.:

Only Winslow and Jay represent Patterson estate. Cox resigned—no successor appointed—leaving other two to act; Jay's address, sec'y American legation, Paris, France.

THOS. J. FISHER & CO.

69 EXHIBIT A. H. No. 49.

WASHINGTON, D. C., *February* 15, 1898.

Messrs. Thomas J. Fisher & Co.

GENTLEMEN: The enclosed letter from Mr. Neal, assistant treasurer of the B. & O. R. R. Company, together with draft in the Patterson matter, is forwarded to you for your information. Kindly endorse the draft and deposit in your bank for collection.

Yours very truly, HAMILTON & COLBERT.

EXHIBIT A. H. No. 50.

Thomas J. Fisher & Co., real-estate brokers, etc.

WASHINGTON, D. C., *Feb.* 16*th*, 1898.

Messrs. Hamilton & Colbert, 512 F street, city.

GENTLEMEN: We beg to acknowledge the receipt of your favor of the 15th inst. enclosing draft of the B. and O. Railroad Company for $377.77 in payment of rent for lots in square No. 710 for six months from August 1st, 1897, to February 1st, 1898, which amount has been passed to the credit of Mrs. Eliza W. Patterson.

Yours truly, THOS. J. FISHER & CO.

M.

F. P. M.

EXHIBIT A. H. No. 51.

1321 18TH, *Feb'y* 17*th*, —.

Mr. Stellwagen.

DEAR SIR: Mr. Hamilton told me that the check, $377.77, of the Balt. & Ohio R. R. Company for the semi-annual rent for my property on 1st Str. east has been paid to you as agent for Mr. Winslow, to whom the check was made out, &, as he was not here to sign the check, I could not get the money. I do not understand why the check was not made out, as it has always been for years, to the three trustees, so that when one was absent either of the others would sign & I get the money at once. Now that it has been paid to Fisher & Co., agent, to my account, I will thank you to have it placed to my credit in Riggs national bank, so that I can draw upon it without further delay.

Yours truly, ELIZA W. PATTERSON.

EXHIBIT A. H. No. 52.

Thomas J. Fisher & Co., real-estate brokers, &c.

WASHINGTON, D. C., *Feb.* 19*th*, 1898.

Mrs. Eliza W. Patterson, 1321 18th street, city.

DEAR MADAM: Your letter to our Mr. Stellwagen has been received, and, as he is at home sick, we have this day taken the
70 liberty of attending to the matter for you, and herewith

enclose deposit slip on the Riggs national bank for $377.77, amount of the B. and O. Railroad Company's check.

Very truly yours, THOS. J. FISHER & CO.

T. M. G.
1 enc.

EXHIBIT A. H. No. 53.

John K. Cowen and Oscar G. Murray, receivers.

Treasurer's office, Baltimore and Ohio railroad.

C. W. R. "B."

BALTIMORE, MD., *February 14th*, 1898.

Messrs. Hamilton & Colbert, 512 F St. N. W., Washington, D. C.

GENTLEMEN: Your letter of the 9th inst., addressed to Mr. J. D. McCubbin, Jr., real-estate agent, regarding the voucher in favor of Francis Winslow, trustee, has been referred to me by Mr. McCubbin. Following your suggestion, I enclose you herewith the voucher which I will be obliged if you will turn over to Messrs. Thomas J. Fisher & Co., having them indorse it "Francis Winslow, trustee, per Thomas J. Fisher & Co., attorneys," and deposit it in their bank for collection at the Citizens' national bank, Baltimore.

Yours most truly, J. M. NEAL,
Ass't Treasurer.

I hereby certify that the foregoing depositions (comprising sixty-five typewritten pages, together with the appendix of exhibits thereto), were taken down by me in shorthand, as an examiner in chancery, from the statements when and as uttered by the deponents thereof; that the same were thereafter transcribed by me and reduced to typewriting, and thereupon read and subscribed by the respective deponents thereof in my presence.

I further certify that the exhibits in said appendix are true copies made by me from the originals thereof.

I further certify that my fee of $— for taking, certifying, and returning said depositions, with the exhibits thereto, has been paid to me by the complainant.

And I further certify that I am not of counsel nor in anywise interested in this cause.

ALBERT HARPER,
Examiner in Chancery.

71 *Opinion of Justice Barnard.*

Filed Feb. 25, 1901.

In the Supreme Court of the District of Columbia.

THE BALTIMORE AND OHIO RAILROAD COMPANY, Complainant,
vs.
FRANCIS WINSLOW ET AL., Defendants.
} No. 21764. Equity.

Mrs. Catherine Pearson, by her will, executed in 1862, devised certain real estate to three trustees for the sole and separate use of her daughter, Mrs. Eliza W. Patterson, during her life, she to occupy, possess, and use the same and receive all the income therefrom, with power in the trustees to sell and convey any of the estate for the purpose of changing the investment, if she should request the same, in writing signed by her in the presence of a witness and attested by such witness. The trustees on August 1, 1872, a few years after Mrs. Pearson's death, signed a lease of certain vacant lots in square 710 to the complainant company.

These lots contained about 41,975 square feet of ground, and the rental per annum was $755.55, and the lease was for a term of five years, with a privilege of purchase at any time during the term for $12,592 and a right of renewal for another term of five years.

The complainant company took possession of said lots under the said contract, and has remained in possession until the present time and has paid the yearly rental as therein agreed.

No formal renewal appears to have been made of said lease, but on February 1, 1883, the trustees and Mrs. Patterson executed a similar lease to said company for a term of five years from August 1, 1883, with the same privileges of purchase and renewal.

On January 30, 1888, a further lease was signed by the trustees and said company for a term of five years from August 1, 1887, with like privilege of purchase and renewal, but this was not signed by Mrs. Patterson.

No renewal was had of this lease, but October 17, 1892, a similar lease was signed by one of the trustees, although purporting to be made by all three, and containing the same privileges of purchase and renewal and being for a term of five years from August 1, 1892. This lease does not appear to have been signed by the company, but it was acted upon by the company as if it had been signed by it. This lease expired August 1, 1897, but the privilege of renewal, if not exercised during the term by the lessee notifying the lessors of its election to renew, was to extend for three months after notification of the lessee by the lessors of the expiration of the lease.

August 4, 1897, the company's agent wrote to the trustees that said lessee desired to renew the lease for another term of five
72 years. This letter reached Judge Cox, who was one of the original trustees, at Hot Springs, Virginia, and he on August

8, 1897, wrote the agent of the company that he was no longer a trustee, and gave the address of Mr. Winslow, one of the substituted trustees, who was then acting.

On August 10, 1897, the same notice was sent to Mr. Winslow, and on September 27, 1897, he replied that they were then prepared to convey the property with a perfect title, and preferred executing such conveyance to renewal of the lease. No renewal was therefore had and no arrangement made for the purchase, the company preferring to lease at that time, but the same rental was thereafter paid by the company to Mrs. Patterson for a period of six months, by means of a draft to the order of Mr. Winslow, one of the trustees, which was not personally endorsed by such trustee, but by Fisher and Company, who supposed they were authorized to do so, or that their act in so doing would be approved by the said trustee, they being his agents and agents for the estate of Mrs. Patterson. Thereafter other payments were accepted by said trustee, under stipulation that their acceptance should be without prejudice to any rights of the parties.

Finally the company notified the trustees that it was ready to purchase the property on the terms stated in the said leases, but the trustees declined to sell. They had previously offered to lease for six years, at $1,500 a year, which the company declined to accept.

Not being able to agree, the trustees brought suit before a justice of the peace for possession of said lots in March, 1900, and judgment was given for possession, and an appeal was taken by the company, and the case is now pending in this court, being No. 43895, law.

In August, 1900, said trustees filed suit in this court, No. 44106, law, for use and occupation of said lots from August 1, 1897, claiming $6,500, with interest, which suit is still pending.

The company, claiming it has the right of renewal and purchase under the facts, filed its bill to enjoin the prosecution of these two suits at law, and prayed for a decree requiring said trustees to convey said lots for the price and on the terms stated in said lease of August 1, 1872.

An injunction *pendente lite* was granted, and, pending the final hearing, the company has been paying the rental as fixed by the said leases, but without prejudice.

Testimony has been taken, and the cause now is presented for final decree.

It is contended by counsel for the defendants herein that there never was any contract between the trustees and the railroad company which had any binding force, so far as the purchase of this property was concerned, because at most it was only an option and lacked mutuality as a contract, and because it was made with trustees under a will, in a manner not authorized by the will.

It is further contended that even if the formalities prescribed by the will had been observed, that the long delay in accepting
73 the option and the advance in value of the ground would make it inequitable for the court to now decree specific performance.

It seems clear, from a careful reading of the will of Mrs. Pearson, that she did not intend that any of the real estate in which the beneficial interest was devised for life to her daughter, Mrs. Patterson, should be sold except for change of investment, and that such sale could only be made at the request of the life tenant, manifested in a definite manner, as therein provided.

All persons dealing with the property were bound to take notice of the provisions of this will and of the powers of the trustees and the life tenant.

If the trustees and the life tenant had undertaken to sell and convey the property in any other way, such contract, fairly made, could no doubt have transferred said property to a purchaser for the term of the life estate of Mrs. Patterson, but at her death the remaindermen could assert their title.

Neither the life tenant nor the remaindermen are parties to this suit and could not be bound by any decree herein against the trustees. If the trustees, however, have acted within the scope of their powers, they would be bound by such action. Should any question exist as to the action of the trustees being beyond the scope of their powers, then it would seem to be necessary and proper that the persons most interest- in raising that question should be before the court, and they ought to be made parties.

Rule 38 of the equity rules provides that the beneficiaries may be dispensed with in suits concerning real estate which is vested by devise in trustees competent to sell, and to give discharges for proceeds of sale and for rents and profits.

That is hardly this case, for the will seems to provide that the life tenant alone shall have power to give an acquittance to tenants for rent or income, and she alone can authorize the trustees to sell any of the property devised. This rule, then, does not seem sufficient to warrant the court in making a decree affecting the rights of the beneficiaries under this will when they are not made parties.

Waiving that point, however, I am unable to find any substantial ground from the evidence in this case on which a decree for complainant could be based if the proper parties were before the court.

As stated by the Court of Appeals in Jones *v.* Holladay, 2 App. D. C., 289, "He who contracts with a trustee must do so at his risk."

The course of dealing for the many years since the first lease in this case was made has, no doubt, bound all parties to the rental to be paid, at least until such time as objection may have been made to a longer continuance of the arrangement, but I am unable to find that any valid contract was made for a sale either, in the first instance, by any of said contracts of lease or by ratification by the *cestui que trust* thereafter, such as was expressly provided by the will and such as is required to be proven before a court of equity will decree specific performance.

I do not wish to be understood as expressing any opinion as to the effect of continued occupancy after the expiration of any lease,
74 under the facts in this case, with reference to the amount of the rental to be paid. That is a matter which the court can determine on the law side.

Without extending this opinion further, I am convinced that the complainant is not entitled to the relief prayed on the facts shown in this case, and I am therefore constrained to dismiss the bill.

JOB BARNARD, *Justice.*

Final Decree.

Filed Feb. 28, 1901.

In the Supreme Court of the District of Columbia.

BALTIMORE & OHIO RAILROAD COMPANY *vs.* FRANCIS WINSLOW, AUGUSTUS JAY, and The American Security and Trust Company, Substituted Trustees under the Will of Catharine Pearson. } No. 21764. In Equity.

This cause came on to be heard at the January term and was argued by counsel; and thereupon, upon consideration thereof, it is this 27th day of February, A. D. 1901, dered, adjudged, and decreed as follows: That the injunction heretofore ordered in this cause be, and the same hereby is, dissolved, and that the bill of complaint be, and the same hereby is, dismissed, with costs, and that the defendants have execution therefor as at law; and from this decree an appeal is in open court prayed by and allowed to the complainant.

JOB BARNARD, *Justice.*

Memorandum.

March 14, 1901.—Appeal bond filed.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 130, inclusive, to be a true and correct transcript of the record, as prescribed by rule 5 of the Court of Appeals of the District of Columbia, in cause No. 21764, equity, wherein The Baltimore and Ohio Railroad Company is complainant and Francis Winslow *et al.* are defendants, as the same remains upon the files and of record in said court.

75

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 18th day of April, A. D. 1901.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1087. The Baltimore and Ohio Railroad Co., appellant, *vs.* Francis Winslow *et al.* Court of Appeals, District of Columbia. Filed Apr. 19, 1901. Robert Willett, clerk.

76 THURSDAY, *May 23d, A. D.* 1901.

THE BALTIMORE AND OHIO RAILROAD COMPANY, Appellant,
vs.
FRANCIS WINSLOW, AUGUSTUS JAY, and THE AMERICAN Security and Trust Company, Substituted Trustees under the Will of Catherine Pearson, Deceased. } No. 1087.

The argument in the above-entitled cause was commenced by Mr. George E. Hamilton, attorney for the appellant.

FRIDAY, *May 24th A. D.* 1901.

THE BALTIMORE AND OHIO RAILROAD COMPANY, Appellant,
vs.
FRANCIS WINSLOW, AUGUSTUS JAY, and THE AMERICAN Secu*rity* and Trust Company, Substituted Trustees under the Will of Catherine Pearson, Deceased. } No. 1087.

The argument in the above-entitled cause was continued by Mr. George E. Hamilton, attorney for the appellant, and by Mr. Wm. G. Johnson, attorney for the appellees, and was concluded by Mr. George E. Hamilton, attorney for the appellant. The respective counsel allowed to file additional briefs herein.

77 *Opinion.*

THE BALTIMORE AND OHIO RAILROAD COMPANY, Appellant,
vs.
FRANCIS WINSLOW, AUGUSTUS JAY, and THE AMERICAN Security and Trust Company, Trustees. } No. 1087.

(Mr. Justice MORRIS delivered the opinion of the court:)

This is a suit in equity instituted in the supreme court of the District of Columbia by The Baltimore and Ohio Railroad Company, the appellant here, as complainant, against the appellees, as trustees under the will of Catherine Pearson, deceased, to enjoin certain proceedings at law begun by said trustees to recover the possession of lots numbered nine, ten, eleven, and twelve, in square 710, in the city of Washington, held by said railroad company, and over which the tracks of its Metropolitan branch are constructed.

Catherine Pearson, who died prior to August 1, 1872, and who at the time of her death was the owner of the lots of ground mentioned, left a will whereby, after some bequests not here important to be stated, devised all the rest and residue of her estate, which included the lots in question, to trustees therein named upon certain specified trusts. It is this portion of the will which enters into the present controversy; and it reads as follows:

"All the rest and residue of my estate, real and personal, wheresoever situated, I give and devise to Carlisle P. Patterson, William

H. Philip and Walter S. Cox, or the survivors or survivor of them, to be by them held as trustees for the sole and separate use of my dear daughter Eliza Patterson during the term of her natural life, and so that the same shall not be liable for the debts or subject to the control, contracts or engagements of her present or after-taken husband; to permit her by herself, or her special attorney appointed in writing to be signed by her, to receive the annual income
78 and profits of the same for her own sole and separate use, her receipt or that of her attorney so appointed as aforesaid alone to be an acquittance to the person or persons charged with the payment of such income or any part of the same and to the extent only therein expressed to have been paid; and if she pleases to occupy, possess, and use for her own account, accommodation, and convenience and that of her family any part of the property, real and personal, so held for her separate use and benefit, she shall be allowed to do so: and if at any time the said Eliza Patterson shall, in writing to be signed by her in the presence of and to be attested by a subscribing witness, desire the said Carlisle P. Patterson, William H. Philip, and Walter S. Cox, or the survivors and survivor of them, to sell any part of the estate, real and personal, held by them for her separate use, for the purpose of changing the investment thereof, it shall be lawful for the said named trustees, or the survivors and survivor of them, to sell the same for such purpose, and to transfer and convey the absolute estate in fee therein, to the purchaser thereof; and to invest the same in such manner as the said Eliza W. Patterson may require; and such new investment shall be held by the said trustees for the same use, trusts and purposes and with the same powers and authority of sale and reinvestment as is herein declared of and concerning the original trust subject and separate estate.

"And after the death of the said Eliza W. Patterson the said named trustees and their successors shall hold the said trust subject and separate estate, original and subsequently acquired by sale and reinvestment, for the use and benefit of any child or children of the said Eliza W. Patterson, and the issue of any child or children of the said Eliza who may die leaving issue in the lifetime of said Eliza, and such issue shall take the share or portion of the said estate which their parent or parents would have taken had they survived the said Eliza. And if the said Eliza W. Patterson shall die without leaving a child or children, or issue of any child or children, living at the time of her death, the said trustees and
79 their successors shall hold the said trust subject and separate estate for my right heirs. And if it shall happen that either of the said trustees shall die, or become incapable of acting, or shall refuse to act in the execution of said trusts, then and in every such case, the continuing trustees or trustee shall from time to time nominate some other person or persons, to be approved by the said Eliza W. Patterson, to be trustee or trustees in the place and stead of the person or persons so dying or becoming incapable or refusing to act, and shall convey and settle the said trust subject and separate estate in such manner that the same shall be legally vested in

such continuing trustees or trustee, and such person or persons so named and appointed to that office for the same use, trusts and purposes and with the same power and authority of administration, sale and reinvestment, as is hereinbefore declared of and concerning the said trusts subject and estate, and the said new trustee or trustees shall have the same power to act in the premises in conjunction with the continuing trustees or trustee and as survivors of them, as if they had been originally named trustee or trustees in the premises in this my last will and testament."

This will purports to have been executed on December 4, 1862. Of the trustees named in it Carlisle P. Patterson was the husband of the beneficiary Eliza W. Patterson, who yet survives. He has departed this life, as has also his cotrustee William H. Philip; and the third trustee, the Honorable Walter S. Cox, late one of the justices of the supreme court of the District, has resigned and been discharged from the trust. In their places the appellees Francis Winslow, a son-in-law of Mrs. Eliza W. Patterson, Augustus Jay, a grandson of the testatrix Catherine Pearson, and The American Security and Trust Company, a body corporate in this District, have from time to time been appointed; and they now hold the trust estate mentioned under the will of Catherine Pearson.

By an act of Congress of July 25, 1866, (14 Stat. 250), the Baltimore and Ohio Railroad Company had been authorized to extend the Metropolitan branch of its road into the District of
80 Columbia, with the same rights as it held in Maryland, including the right to acquire property by purchase or condemnation for the construction and use of the road; and subsequent statutes empowered it to extend said branch into the city of Washington over a specified route. This route comprised the lots of ground hereinbefore mentioned. While the railroad company was engaged in the construction and completion of this work, instead of acquiring the lots in question by condemnation, it entered into a lease with the trustees under Mrs. Pearson's will, who were then the original trustees named by the testatrix, whereby the trustees leased the lots to the railroad company for a term of five years from and after August 1, 1872, on the payment of the yearly rental of $755.55 in each and every year, with the privilege to the railroad company to purchase the property at any time during the term for the sum of $12,592, and to receive a good and sufficient deed thereof; and with the further privilege that, at or before the expiration of the term, on the request of the railroad company, the trustees would renew the lease, with the same agreements and privileges for another term of five years, or until such time as they would be prepared to convey the premises with perfect title in fee-simple; and also with the further provision that, in the event of the omission of the railroad company to make a request for the renewal of the lease at or before the expiration of the term, the trustees were required to notify the company of such expiration and to request it to exercise its election to renew the lease, and the privilege of renewal should continue for three months after such notice.

There seems to have been no formal renewal of this lease at the

time of its expiration in 1877: at least no renewal is disclosed by the record. But on February 1, 1883, another lease to the railroad company for a term of five years from and after August 1, 1883, was executed by the then existing trustees, Walter S. Cox, Augustus Jay, and Francis Winslow, with whom the beneficiary, Mrs. Eliza W. Patterson, herself also joined in the execution of the instru-
81 ment, wherein there was no reference to any previous lease, but the rent reserved was the same as in the lease of 1872, that is, $755.55 a year, as were also the privileges for purchase at $12,592, and for further renewal.

Again on January 30, 1888, another lease, identical with the last in every respect except the dates, and except also that Mrs. Patterson herself did not execute it as a party, was executed by the same trustees and the railroad company for a term of five years from and after August 1, 1887.

On October 17, 1892, a new lease, identical in terms with the previous one and purporting to be made by the same trustees, for a further terms of five years from and after August 1, 1892, was executed and delivered to the railroad company by Francis Winslow alone, as trustee. It would seem that Mr. Justice Cox had then withdrawn from the trust and no successor to him had been appointed, and that the other trustee Jay was absent in Europe, where he had become domiciled; so that Winslow at this time, although himself often absent from the District of Columbia and from the United States, remained the only active trustee.

No other formal lease seems to have been executed. But on August 4, 1897, three days after the expiration of the last-mentioned, the railroad company notified the trustees of its desire for a renewal for a further term of five years. To this request Mr. Justice Cox replied that he was no longer trustee, and that Jay was absent in Europe; and he referred the company to Winslow as the acting trustee. Winslow, in course of time, answered the request in the following terms in a communication to one of the attorneys for the company:

"My understanding is that originally the R. R. Co., wishing to purchase the property, could not do so on account of some deficiency in the title. The immediate use of the property being necessary, a lease was made, but in such form as would compel the transfer of the lots at the price agreed whenever a clear title could be
82 given. Pending the transfer, the R. R. Co was to pay 6% on the deferred payment. The renewal of the lease has always been made under the same reciprocal conditions and obligations, and I do not feel authorized to change them; but I suggest, as we are now able to furnish a satisfactory title, the present is a suitable time to transfer the property. I enclose a more formal notice in reply to a letter received from the railroad authorities."

The more formal notice referred to was in the following terms:

"In reply to your letter in relation to the renewal of the lease of the lots in square 710 in this city, I beg to say that we are now prepared to convey the property with a perfect title, and prefer executing such conveyance to renewal of the lease."

This was on September 27, 1897. During the whole period from

the beginning of the first lease in 1872 it seems that checks for the rent as it became due were drawn by the railroad company to the order of the trustees and were indorsed by the trustees, or by one of them in the name of all, to Mrs. Eliza W. Patterson, who was entitled to receive the money under Mrs. Pearson's will. Frequently Mrs. Patterson was in communication with the officers of the railroad company with reference to these checks, and how they were to be drawn, and where they were to be sent. These communications continued as late as February 5, 1898, on which day she requested some modification of a check that had been sent to her on account of the absence both of Jay and Winslow, the trustees, from the United States; and she continued to receive the rent, which seems to have been paid semi-annually, up to August 1, 1898.

On August 12, 1898, a check was sent to Winslow, trustee, by the company for $377.77, apparently for the semi-annual rent due and payable on August 1, 1898. This check was received by Winslow, but not cashed; and on inquiry by the company in regard to it in January of 1899, Winslow wrote, under date of January 31, 1899, the following letter to the company's treasurer:

83 "I am in receipt of your letter of January 20th in relation to the voucher for rent for the premises in Washington. The voucher was received, but pending advice of counsel no action was taken in regard to it. I am advised that the company are and for some time have been only tenants at sufferance; and I have notified Mr. McCubbin (land agent of the company) of that fact, and invited a proposition from the company. Pending a more definite arrangement than now exists, I do not feel justified in accepting payments without the company's full understanding of my position, and have therefore suspended action on the voucher."

Further correspondence ensued between Winslow and the land agent of the company, of which the result was that the company first requested a new lease and finally tendered itself ready and willing to pay the purchase-money—the sum of $12,592—specified in the agreements heretofore mentioned upon the execution and delivery to it of a proper deed, and that Winslow declined both propositions, with this statement: "We prefer to sell the property rather than lease it, but neither in case of sale or lease could we be governed by conditions or prices existing some twenty-five years ago." It appeared that the property had become appreciated in value, the testimony in the record being that it is now worth upwards of thirty thousand dollars.

There were further negotiations continued until about the end of February, 1900, without definite result or special bearing upon the controversy as it now stands before us, and they need not, therefore, be here stated.

Finally the controversy culminated in legal proceedings. On March 8, 1900, in pursuance of a previous notice to quit, the appellees here, as the existing trustees, instituted proceedings before a justice of the peace to dispossess the company and to recover possession of the property. The company, not desiring to have two trials, permitted judgment to be entered by the justice by default

and forthwith appealed from such judgment to the supreme
84 court of the District of Columbia, wherein the cause is yet pending. Subsequently, and while the said proceeding was so pending, the company instituted the present suit by filing its bill in equity to restrain the said proceeding at law, and also another suit which had been instituted to recover for use and occupation; and also to have a conveyance of the property at the price and according to the terms of the lease of August 1, 1872, and the several subsequent renewals thereof; and, if necessary, for a further renewal lease for five years from August 1, 1897; and also for general relief.

There was a temporary restraining order issued, which was afterwards continued to the final hearing. Thereupon answer was filed, and testimony was taken. At the final hearing, the court below dissolved the injunction and dismissed the bill of complaint: and from the decree the present appeal has been prosecuted.

The question principally argued before us in the case is, whether, in the execution of the lease of August 1, 1872, and of its subsequent renewals, the trustees of the estate of Catherine Pearson acted within the scope of their authority as such trustees, when they inserted, or caused to be inserted, therein the provision that the railroad company should have the right thereafter to purchase the property in fee-simple, with a good and valid title, at a certain specified sum of money; and this question we deem it unnecessary to determine. We may say, however, that such an arrangement entered into with a railroad company, armed with the power of the State to prosecute a great public enterprise, and empowered for that purpose to take property by the exercise of the right of eminent domain, may stand upon a somewhat different basis from a similar arrangement entered into with an ordinary purchaser. But however this may be, and we find it necessary to make no decision in regard to it, the power of the trustees, with the assent and concurrence of the beneficiary, to execute the leases which have been recited, except as to the provision for sale, is not open to reasonable
85 doubt. The contention in this regard is that the leases in question were not properly and sufficiently executed by the parties in interest; that only in two cases has the railroad company joined in such execution, the leases of 1872 and 1888; that only in one instance, the lease of 1883, has the beneficiary, the life tenant of the property, joined; that the lease of 1892 was executed only by one of the three trustees, and is wholly invalid; and that all these leases are now at an end and wholly inoperative for any purpose.

We find no merit in this contention. There is no ground whatever in law for the assumption that the signature or formal execution of the railroad company was necessary to the validity of any of the leases; and as to the other objections it is sufficient to say that the life tenant of the property and the beneficiary of the trust during her life, who was and is the sole substantial party in interest, ratified and sanctioned all the leases in question, and has received for upwards of twenty-five years all the rent specified in them to be

paid by the lessee. Neither she nor her trustees can now be permitted to repudiate them. Least of all, will a court of equity allow such repudiation. In equity at least, if not at law, the leases were her leases rather than those of her trustees; and we are not sure that she was not entitled to deal with the property without the intervention of any trustees, and to rent and lease the same at her pleasure, so as to render it productive of income. She was the life tenant, entitled to the use and occupation of the property in her own right, and to receive the income therefrom directly for her own use and upon her own acquittance or receipt, without the intervention of trustees, and for most of the time she was absolutely *sui juris*, a *feme sole*, and competent to deal with her own affairs as she thought proper. It is difficult, therefore, to see why she was not empowered, at all events in equity, to rent and lease this property at her own pleasure. The function of the trustees under the will of Catherine Pearson would seem to have been to secure her life estate and her use and enjoyment of the property from marital control and
86 marital liability rather than to interfere with her management of the estate. In their assumption of such management they acted rather as her agents than as trustees having independent control of the property.

It is of no consequence, therefore, that Mr. Winslow alone executed the last formal lease that was given, that of 1892. He was then to all intents and purposes the sole trustee acting in the execution of the trust. Mr. Justice Cox had been relieved and discharged from the trust by decree of court of June 13, 1892; and Mr. Jay would seem to have become a non-resident of the District of Columbia and of the United States, and to have abandoned all active part in the administration of the trust, if indeed it required action on his part. Under these circumstances, Winslow's lease of the property ratified by the life tenant and for the time being the sole beneficiary, who received and who has continued to receive to this day the consideration for it, which was the income contemplated by the will of Catherine Pearson, cannot now be questioned. Certainly it cannot be questioned in a court of equity, after the term created by the lease has expired and the beneficiary has derived from it all the consideration required in it to be rendered by the appellant.

Omitting from our consideration the clause of the lease of 1892 which provides for the privilege of purchase by the lessee of the property, which provision may for all present purposes be segregated from the instrument, we find no reason for holding that this lease is not a valid lease binding on the trustees of the estate and binding on the beneficiary and life tenant. The covenant for renewal therein contained is not an unreasonable or improper covenant; and we understand it to be conceded on behalf of the appellees that it is a valid and binding covenant, and that the appellant is entitled to one renewal of the lease, if the lease itself is valid and binding. This concession, which is a just and proper one, dispenses with the necessity of any discussion of this point; and being of the opinion, as we have already stated, that the lease is a good *a* valid lease,

it follows in our judgment that the appellant is entitled to the
87 renewal of it from the first day of August, 1897, for the term of five years thereafter which it seeks under the bill of complaint in this case. Being so entitled, it is not liable to proceedings for dispossession or any other similar proceedings; and the proceedings instituted against it and which it is sought by this suit to restrain should be perpetually enjoined.

But there is another and higher ground upon which our conclusion in this case can be based.

That the appellant entered upon the use and occupation of the property in controversy with a view to its purchase when such purchase could properly be effected, we think is very clear. And that this purchase was postponed for a time merely on account of some alleged or supposed deficiencies in the title, which could be removed, and which, if Mr. Winslow's statement in 1899 be correct, were in fact removed at or before that year, we think to be a fair inference from the record. What the character of the use and occupation of the land by the company was to be, and was understood by all the parties to be intended to be, we think also to be entirely clear. Over and through this land the railroad company constructed what is known as its Metropolitan branch, part of a great highway between Washington city, the adjoining States, and the great West. This great highway is not a merely private enterprise, nor a matter of purely private concern: it is a public road, constructed for public purposes, under sanction of the public authority, and over which the public have rights, which cannot be permitted to be obstructed, much less destroyed, either by the company itself to which the franchise has been granted as a public trust to construct and operate this road, or by antagonistic parties claiming the ownership of the land upon which it has been permitted to enter without previous payment therefor, or as the result of any private controversy between the railroad company and such parties. It is very clear that the appellees knew the purpose for which the land was needed, and for which it was subsequently and is now used; and that, with full
88 knowledge of such purpose and intending that such purpose should be carried into effect, they authorized the railroad company to enter upon the land and to construct the road thereon. The best evidence of the license so given to enter is to be found in the lease given at the time and the successive leases executed thereafter; and it is beyond question that such license was given to the company. This license was not solely for the benefit of the railroad company, but primarily for the benefit of the public, which required this construction for its use. The license was in effect a dedication of the land for a highway, subject, of course, to the right of compensation therefor, which can be enforced in a proper way, but not by the dispossession of the company or the destruction of the public easement. The license to enter and construct the road is in its nature irrevocable. It cannot be recalled, except as the result of the destruction of the railroad company and the abandonment of

the franchise. It is well-settled law that an action at law for the dispossession of the railroad company cannot be maintained in such a case, if the company is willing to make compensation for the use and occupation of the land. Railroad Co. *vs.* Stanley, 35 N. J. Eq. 283; Railroad Co. *vs.* Bruce, 102 Pa. State, 23; Railroad Co. *vs.* Taylor, 63 Wisconsin, 325; Prevolt *vs.* Railroad Co. 57 Mo. 256; Railroad Co. *vs.* Turner, 31 Ark. 494.

Assuming that there is grave doubt whether the trustees under the will of Catherine Pearson had authority under that will to enter into the contract of sale to the railroad company, which they incorporated into their several leases, we do not think that the contract is one of which specific performance should be decreed in equity under the circumstances of this case. Even when a contract is free from doubt, it is well-settled law that specific performance will not always be decreed. Specific performance generally rests in the sound judicial discretion of the court of equity. In the present case the railroad company has another remedy, plain and adequate, whereby to preserve its own rights and those of the public in the
89 premises, that of the exercise of the right of eminent domain vested in it by its charter and by the act of Congress which authorized its entrance into this city and District; and it is both its right and its duty to exercise that right by taking steps in the present suit or otherwise, as it may be advised, to ascertain the value of the use and occupation which it desires of the land in question and to make compensation therefor to the owners of the land. Railroad Co. *vs.* Stanley, 35 N. J. Eq. 283; Drury *vs.* Midland Railroad Co. 127 Mass. 571; Railroad Co. *vs.* Bruce, 102 Pa. State, 23; Railroad Co. *vs.* Johnston, 59 Pa. State, 290; Railroad Co. *vs.* Taylor, 63 Wisc. 325; Prevolt *vs.* Railroad Co. 57 Mo. 256; Railroad Co. *vs.* Turner, 31 Ark. 494; Gilman *vs.* Railroad Co., 37 Wisc. 317; Railroad Co. *vs.* Lewton, 20 Ohio St. 401; Trenton Water Co. *vs.* Chambers, 1 Stockt. 471; Railroad Co *vs.* Booraem, 1 Stew. Eq. 450.

The case of Railroad Co. *vs.* Stanley, above cited, is directly in point. There the owners of land, on which a railroad company proposed to construct its railroad, entered into an agreement with the company for the use and occupation of the land by the latter, in consideration of the establishment of a depot or station thereon by the company, and certain arrangements for the running of trains. The company took possession of the land and constructed its railroad, but failed to build the station. It became insolvent, and its property and franchises were sold under foreclosure, and another company, organized under the general law of the State, became the owner and possessor of them. Ejectment was instituted by the owners of the land against the latter company to recover possession of the property; and the company thereupon filed a bill in equity to stay the proceedings. The court of errors and appeals of the State of New Jersey held that the complainant company was entitled to the injunction which it prayed.

The other cases cited are substantially to the same effect; and the principle established by them adverse to the right of the owners

of the land to repossession seems to be fair and just, and to afford a proper criterion for the determination of the case now before us.

90 In view of what has been said, we are of opinion that, under the provisions of the lease of 1892, executed by Francis Winslow, trustee, for and on behalf of the life tenant, Mrs. Eliza W. Patterson, the appellant was and is entitled to one renewal of such lease for the term of five years from and after the first day of August, 1897, upon the terms and conditions of said lease as to the rents to be paid therefor, and that during the continuance of such term no suit for the dispossession of the appellant can be maintained. We are also of opinion that, for the time subsequent to the determination of said renewed lease for which the appellant shall require the use and occupation of said land, the appellant is entitled and it is its duty to acquire the right to such use and occupation, under the exercise of the right of eminent domain conferred upon it by the act of Congress, by the ascertainment of the value of such use and occupation, and payment to the owners of the land of the just compensation so to be ascertained, and the bill of complaint in this cause may be retained for the purpose of such ascertainment of value and just compensation.

It follows that the decree of the supreme court of the District of Columbia, dissolving the injunction granted in this cause and dismissing the bill of complaint, must be reversed, with costs, and that the cause will be remanded to that court, with directions to vacate said decree, to restore the injunction and make the same perpetual, and for such further and other proceedings as may be just and proper, according to law and in conformity with this opinion, and it is so ordered.

91 TUESDAY, *June 18th, A. D.* 1901.

THE BALTIMORE AND OHIO RAILROAD COMPANY, Appellant, *vs.* FRANCIS WINSLOW, AUGUSTUS JAY, and The American Security and Trust Company, Substituted Trustees under the Will of Catherine Pearson, Deceased.	No. 1087, April Term, 1901.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said supreme court, in this cause be, and the same is hereby, reversed with costs; and that this cause be, and the same is hereby, remanded to the said supreme court, with directions to vacate said decree, to restore the injunction

and make the same perpetual, and for such further and other proceedings as may be just and proper, according to law and in conformity with the opinion of this court.

Per MR. JUSTICE MORRIS.

June 18, 1901.

92 TUESDAY, *June 18th, A. D.* 1901.

THE BALTIMORE AND OHIO RAILROAD COMPANY, Appellant,
vs.
FRANCIS WINSLOW, AUGUSTUS JAY, and THE AMERICAN Security and Trust Company, Substituted Trustees under the Will of Catherine Pearson, Deceased. } No. 1087.

On motion of Mr. William G. Johnson, of counsel for the appellees in the above-entitled cause, it is ordered by the court that said appellees be allowed an appeal to the Supreme Court of the United States, and the bond to act as a supersedeas is fixed at the sum of one thousand dollars.

93 Know all men by these presents, that we, Francis Winslow, Augustus Jay and The American Security and Trust Company, substituted trustees under the will of Catherine Pearson, deceased, as principals, and Charles J. Bell as surety, are held and firmly bound unto The Baltimore and Ohio Railroad Company in the full and just sum of one thousand dollars, to be paid to the said The Baltimore and Ohio Railroad Company, its certain attorneys, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-second day of June in the year of our Lord one thousand nine hundred and one.

Whereas, lately at a Court of Appeals of the District of Columbia, in a suit depending in said court, between The Baltimore and Ohio Railroad Company, as appellant, and the said Francis Winslow, Augustus Jay and The American Security and Trust Company, substituted trustees under the will of Catherine Pearson, deceased, as appellees, a decree was rendered against the said appellees, from which an appeal to the Supreme Court of the United States was prayed by and allowed to the said appellees, to reverse the decree in the aforesaid suit, and a citation directed to the said The Baltimore and Ohio Railroad Company has been issued, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington within thirty days from the date thereof,

Now, the condition of the above obligation is such, that, if the said Francis Winslow, Augustus Jay and The American Security and Trust Company, substituted trustees under the will of Catherine Pearson, deceased, shall prosecute their said appeal to effect, and

answer all damages and costs if they fail to make their plea
94 good, then the above obligation to be void; else to remain in full force and virtue.

FRANCIS WINSLOW, *Trustee*, [SEAL.]
By WM. G. JOHNSON, *Attorney-in-fact.*
AUGUSTUS JAY, *Trustee*, [SEAL.]
By WM. G. JOHNSON, *Attorney-in-fact.*
AMERICAN SECURITY AND TRUST CO., *Trustee*, [SEAL.]
By C. J. BELL, *President.*

Attest: JAMES F. HOOD, *Secretary.*

CHARLES J. BELL. [SEAL.]

Sealed and delivered in the presence of:
WM. A. McKENNEY.

Approved by:
R. H. ALVEY,
Chief Justice, Court of Appeals,
District of Columbia.

[Endorsed:] No. 1087. The Baltimore & Ohio Railroad Co. *vs.* Francis Winslow *et al.* Supersedeas bond on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed June 24, 1901. Robert Willett, clerk.

95 UNITED STATES OF AMERICA, *ss:*

To the Baltimore and Ohio Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Francis Winslow, Augustus Jay, and The American Security and Trust Company, substituted trustees under the will of Catherine Pearson, deceased, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the appellants should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 24th day of June, in the year of our Lord one thousand nine hundred and one.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the
District of Columbia.

Service of the above citation accepted this 24th day of June, A. D. 1901.

HAMILTON & COLBERT,
Attorneys for Baltimore & Ohio
Railroad Company, Appellee.

[Endorsed:] Court of Appeals, District of Columbia. Filed Jun. 24 1901 Robert Willett, clerk.

96 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 95 inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of The Baltimore and Ohio Railroad Company, appellant, *vs.* Francis Winslow, Augustus Jay, and The American Security and Trust Company, substituted trustees under the will of Catherine Pearson, deceased, No. 1087, April term, 1901, as the same remain upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 28th day of June, A. D. 1901.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 18,212. District of Columbia Court of Appeals. Term No. 359. Francis Winslow, Augustus Jay, and The American Security & Trust Company, substituted trustees under the will of Catherine Pearson, deceased, appellants, *vs.* The Baltimore & Ohio Railroad Company. Filed June 29th, 1901.